

No. 18-3322

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**LOCAL 702, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

Respondent

and

**CONSOLIDATED COMMUNICATIONS, D/B/A ILLINOIS
CONSOLIDATED TELEPHONE COMPANY**

Intervening Respondent

**SEPARATE APPENDIX TO BRIEF OF PETITIONER LOCAL 702,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February 2019, the foregoing was filed with the Clerk of the United States Court of Appeals for the Seventh Circuit using the CM/ECF system, which will send notification on all parties.

/s/ Christopher N. Grant
Christopher N. Grant

*Counsel for Petitioner,
Local 702, International
Brotherhood of Electrical Workers*

Consolidated Communications d/b/a Illinois Consolidated Telephone Company and Local 702, International Brotherhood of Electrical Workers, AFL-CIO. Cases 14-CA-094626 and 14-CA-101495

July 3, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND SCHIFFER

On November 19, 2013, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions, a supporting brief, a reply brief to the General Counsel's answering brief, a reply brief to the Charging Party's answering brief, and an answering brief to the Charging Party's cross-exceptions. The General Counsel filed an answering brief. The Charging Party filed cross-exceptions, a supporting brief, an answering brief to the Respondent's exceptions, and a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions³ as

¹ We deny the Respondent's request for oral argument, as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In addition, the Respondent asserts that the judge's findings demonstrate bias. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contention is without merit.

We find it unnecessary to pass on the Union's exception to the judge's failure to find that the Respondent lacked an honest belief that the disciplined employees engaged in serious misconduct because such a determination would not affect the outcome. See, e.g., *Augusta Bakery Corp.*, 298 NLRB 58, 58 (1990), *enfd.* 957 F.2d 1467 (7th Cir. 1992) (assuming, without deciding, that employer held an honest belief that employees engaged in strike misconduct, the Board nonetheless found their discharges unlawful because the General Counsel established that the misconduct did not occur).

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) by terminating employees Patricia Hudson and Brenda Weaver, we find it unnecessary to rely on the judge's speculation as to what might have motivated Troy Conley's testimony.

³ We have modified the judge's conclusions of law to include our additional finding that the Respondent violated Sec. 8(a)(5) by reassigning and eliminating the job duties of Office Specialist-Facilities Department, formerly held by employee Weaver, without providing the Union sufficient notice and opportunity to bargain about the change. The judge found it unnecessary to rule on this 8(a)(5) allegation because he found that Weaver's termination was unlawful, and the Re-

spondent conceded that it must return her to her prior or similar position if her termination was found to violate the Act. However, we find that the judge's make-whole order returning the position of office specialist in the facilities department to the status quo that existed at the time of Weaver's discharge does not fully remedy the Respondent's clear violation of Sec. 8(a)(5). The Respondent had a duty to notify and bargain with the Union before implementing its decision to reassign job duties and eliminate Weaver's position, as they are mandatory subjects of bargaining. See *Finch, Priddy & Co.*, 349 NLRB 270, 277 (2007).

AMENDED CONCLUSIONS OF LAW

Insert the following Conclusion of Law 3.

"3. Respondent violated Section 8(a)(5) and (1) by refusing to bargain collectively with the Union by unilaterally reassigning and eliminating the job duties of the unit position of office specialist-facilities department, formerly held by Brenda Weaver, without giving the Union sufficient notice and an opportunity to bargain about the change."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Consolidated Communications d/b/a Illinois Consolidated Telephone Company, Mattoon, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter the subsequent paragraph.

"(b) Refusing to bargain collectively with Local 702, International Brotherhood of Electrical Workers, AFL-CIO, the exclusive collective-bargaining representative of the Respondent's unit employees, by unilaterally reassigning and eliminating the job duties of office specialist-facilities department without giving the Union sufficient notice and an opportunity to bargain about the change."

2. Insert the following for paragraph 2(f) and reletter the subsequent paragraphs.

"(f) Before implementing any changes to the job duties of office specialist-facilities department, notify, and on request, bargain in good faith with Local 702, International Brotherhood of Electrical Workers, AFL-CIO."

3. Substitute the amended notice for that of the administrative law judge.

spondent conceded that it must return her to her prior or similar position if her termination was found to violate the Act. However, we find that the judge's make-whole order returning the position of office specialist in the facilities department to the status quo that existed at the time of Weaver's discharge does not fully remedy the Respondent's clear violation of Sec. 8(a)(5). The Respondent had a duty to notify and bargain with the Union before implementing its decision to reassign job duties and eliminate Weaver's position, as they are mandatory subjects of bargaining. See *Finch, Priddy & Co.*, 349 NLRB 270, 277 (2007).

⁴ We shall modify the judge's recommended Order to conform to our findings and the Board's standard remedial language. We shall also substitute a new notice to conform to the Order as modified and in accordance with *Durham School Services*, 360 NLRB 694 (2014).

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APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT discipline, terminate, refuse to recall, or suspend you because of your union or concerted protected activities, including your participation in a legal strike.

WE WILL NOT refuse to bargain collectively with Local 702, International Brotherhood of Electrical Workers, AFL-CIO, the exclusive collective-bargaining representative of our unit employees, by unilaterally reassigning and eliminating the job duties of office specialist-facilities department without giving the Union sufficient notice and an opportunity to bargain about the change.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Patricia Hudson and Brenda Weaver full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Patricia Hudson, Brenda Weaver, Michael Maxwell, and Eric Williamson whole for any loss of earnings and other benefits resulting from their discharge or discipline, less any net interim earnings, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Patricia Hudson, Brenda Weaver, Michael Maxwell, and Eric Williamson for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Patricia Hudson and Brenda Weaver, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful suspensions of Michael Maxwell and Eric Williamson, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the suspension will not be used against them in any way.

WE WILL restore to the position office specialist in the facilities department those duties that were performed by Brenda Weaver prior to her discharge.

WE WILL, before implementing any changes to the job duties of office specialist-facilities department, notify, and on request, bargain in good faith with Local 702, International Brotherhood of Electrical Workers, AFL-CIO.

CONSOLIDATED COMMUNICATIONS D/B/A
ILLINOIS CONSOLIDATED TELEPHONE CO.

The Board's decision can be found at www.nlrb.gov/case/14-CA-094626 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



Paula B. Givens, Esq., for the General Counsel.
David C. Lonergan, Esq. and *Robert T. Dumbacher, Esq.* (*Hutton Williams LLP*), of Dallas, Texas, and Atlanta, Georgia, for the Respondent.
Christopher N. Grant, Esq. (*Schuchat, Cook & Werner*), of St. Louis, Missouri, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Mattoon, Illinois, from August 19-23 and on September 17, 2013. IBEW Local 702, the Charging Party Union, filed the charge in Case 14-CA-094626 on December 11, 2012, an amended charge on December 17, and the charge in

Case 14-CA-101495 on March 28, 2013. The General Counsel issued a consolidated complaint on May 30, 2013.

The Charging Party Union went on strike on the evening of Thursday, December 6, 2012. The Union offered to return to work unconditionally on the evening of December 11. Most strikers returned to work on Thursday, December 13. On December 13, Respondent, Consolidated Communications (CCI), suspended four employees indefinitely for alleged misconduct related to the strike. On December 17, it terminated the employment of two of these unit employees, Office Specialists Brenda Weaver and Pat Hudson. It suspended the other two employees, janitor Michael Maxwell and switchman Eric Williamson for 2 days. The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) in imposing this discipline on all four employees.

Hudson had worked for Respondent for 39 years and had received no prior disciplinary action. Weaver had worked for Respondent for 13 years and had not received any prior discipline. Hudson and Weaver were terminated for alleged misconduct in three incidents on December 10, 2010. The first incident was allegedly harassing and intimidating nonunit employee Sarah Greider by trapping her in her car between their cars as she left Respondent's premises. The second was harassing and intimidating nonunit employee Troy Conley in his work van with their vehicles on the highway while he drove to a work assignment. The third incident was allegedly intimidating and harassing nonunit employee Kurt Rankin as he left Respondent's premises. The reasons given for termination in documentation presented to Hudson and Weaver were workplace violence and/or violation of company conduct and work rules policies.

Maxwell was suspended for impeding, harassing, and intimidating nonunit employee Leon Flood as he left Respondent's Taylorsville, Illinois garage on December 8. Eric Williamson was suspended for 2 days for allegedly striking nonunit employee Dawn Redfern's car mirror as she left Respondent's premises on the evening of December 10 and making an obscene gesture directed at nonunit employee Tara Walters on the morning of December 11.

In March 2013, Respondent eliminated the job previously held by Brenda Weaver and distributed her duties to employees in other positions. The General Counsel alleges that Respondent violated Section 8(a)(3), (4), (5), and (1) in doing so.

The legal principles generally applicable to these disciplinary measures are that the Board must first consider whether Respondent proved that it had an honest belief that the disciplined employee engaged in strike misconduct of a serious nature. If Respondent meets this burden, the Board will find the discipline lawful unless the General Counsel shows that the striker did not engage in the alleged misconduct or that the conduct was not serious enough for the employee to forfeit the protection of the Act. *Clear Pine Mouldings*, 268 NLRB 1044, 1046

(1984); *Universal Truss, Inc.*, 348 NLRB 733 (2006), and cases cited therein.¹

The case law does not require much for Respondent to meet its burden. Thus, in this case the critical issues are whether the disciplined employees actually engaged in the alleged conduct, whether their actions in fact rise to the level of misconduct and whether their misconduct was serious enough to warrant discharge in the cases of Hudson and Weaver or a 2-day suspension in the cases of Maxwell and Williamson.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Charging Party Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is a telecommunications company. It operates in several States. This case involves its facilities in Mattoon, Illinois, which is located approximately halfway between St. Louis and Indianapolis. Respondent derives gross revenues in excess of \$250,000. It purchases and receives goods valued in excess of \$50,000 at its Illinois facilities directly from places outside of Illinois. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Union and Respondent had a collective-bargaining agreement that expired on November 15, 2012, covering approximately 175 unit employees.³ Contract negotiations continued after the expiration of the agreement. On December 5, a company proposal was rejected by a vote of bargaining unit employees, apparently due to dissatisfaction with the proposal relating to health insurance issues. The next day, which was the 22d bargaining session, Respondent informed the Union that there would be no further bargaining sessions unless the Union made concessions on pension issues. That evening bargaining unit members voted to strike.

Friday, December 7, was the first full day of the strike. The Union picketed 10 locations consistently. However, only three of these locations have any relevance to this case. The Taylorsville garage, the Rutledge Building in Mattoon, and the corporate headquarters in Mattoon.⁴

¹ Respondent argues that these principles do not apply to Hudson and Weaver's conduct on the highway in the Conley incident. That argument will be addressed herein.

² The statement at Tr. 120, LL. 3-5, is mistakenly attributed to this judge.

³ Respondent and the Union reached agreement on a new contract on March 28, 2013, after the events pertaining to this case.

⁴ The Rutledge Building is more formally known as the Mattoon service center or general warehouse. Respondent has two offices on route 16, Charleston Avenue, which are about 1-1/2 miles from Rutledge. The corporate office is at Rt. 16 and 17th Street. The central office (CO) is at Rt. 16 and 15th St. (the 1501 building).

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The Michael Maxwell Incident at the Taylorsville
Garage on Saturday, December 8

On Saturday morning, December 8, about six employees picketed Respondent's garage in Taylorsville, Illinois. The pickets walked back and forth across the entrance to the driveway of the garage parking lot. Sometime in the midmorning, Leon Flood, one of Respondent's IT systems analysts, left the garage building in a company van. Frank Fetchak, a network engineer called in from Pennsylvania to work during the strike, rode in the passenger seat.

As the van approached the street, it stopped briefly in front of the pickets, who were moving back and forth. Then Flood inched forward and his van hit Michael Maxwell, one of the pickets.⁵ Maxwell was moving when the van hit him. He fell forward and braced himself by putting his forearm on the hood. As Maxwell tried to regain his balance he was pushed towards the driver's side of the van. He gave Flood the finger and yelled, "Fuck You!" at Flood.

Leon Flood apparently completed a CCI incident report on December 8 and then spoke with Gary Patrem, CCI senior director of central services, on December 10. The immediate supervisors of three of the disciplined employees in this case, Maxwell, Hudson, and Weaver report to Patrem. Patrem instructed Flood to fill out a Huffmaster⁶ incident report, which he did on December 11, 2012.

On December 12, Anna Bright, a human resources manager, informed Union Representative Brad Beisner via email that the Company would be issuing disciplinary actions to Maxwell, Pat Hudson, and Brenda Weaver on December 13. Beisner immediately emailed Bright requesting all pertinent information used by CCI in investigating the three employees including, but not limited to, written statements, video, pictures, identity of eye witnesses, and police reports (GC Exh. 11).

On December 13, Patrem met with Maxwell and union representatives. Patrem provided the Union with none of the documentation it requested. He informed Maxwell that he had been accused of impeding, threatening, intimidating, and harassing CCI employees. Specifically, Patrem told Maxwell he struck a company vehicle, proceeded to the front of the vehicle and leaned on the hood for an extended period of time, and then proceed to the driver's window and verbally harassed him (GC Exh. 23). Maxwell told Patrem that Flood drove aggressively and had hit him.

CCI suspended Maxwell indefinitely. On December 16, CCI informed Maxwell that he had been suspended for 2 days and that he should report to work on Monday, December 17. On December 17, Patrem gave Maxwell a document stating that he had been suspended for violating Respondent's policy regarding workplace violence (GC Exhs. 12(a)-(c)). At the Decem-

ber 17 meeting, Patrem told Maxwell that he had threatened and intimidated Leon Flood and that he had impeded the progress of Flood's vehicle. Respondent suspended Maxwell for violating its workplace violence policy.

Maxwell did not threaten anyone or commit any acts of violence on December 8, 2012. He briefly impeded Flood's progress in leaving the Taylorsville garage. However, he did so no more than the other five picketers and was not suspended for failing to move out of the way when Flood approached the picket line. Since Respondent suspended Maxwell for offenses he did not commit, I find it violated Section 8(a)(3) and (1) as alleged.

Sunday, December 9, 2012

On Sunday, December 9, Respondent held a meeting for individuals who would be working during the strike with representatives from the Huffmaster Security Company. The meeting was held at the Rutledge Building located at 2116 S. 17th Street in Mattoon, in which Respondent set up a command center for the strike. Attendance was not taken but many management employees and supervisors from Mattoon, company workers called in from other locations, and nonunit employees were at the meeting, including some of the 27 customer service representatives who work in Mattoon.

A Huffmaster representative instructed the attendees as to how to conduct themselves during the strike. The representative told the attendees that Huffmaster guards would be stationed at the picket lines and they should follow the guards' instructions in crossing the picket lines. He also told employees to approach picket lines slowly and to keep their windows rolled up. Respondent distributed Huffmaster's written instructions (GC Exh. 21), to the individuals who attended the meeting; others received the instructions via email.

The Huffmaster written instructions advised these workers to report any damage to their vehicles to the police and to file a police report. The instructions advised employees who are followed when leaving company property to drive directly to the nearest police facility or return to company property if it is closer (GC 21, p. CCI-0020). These instructions also advised CCI personnel to watch for cars that may be following them when parking at a remote location. Huffmaster told employees who thought they were being followed to drive the nearest police department or drive back to the parking location. The instruction also stated:

If you encounter any problems during the course of your normal day, contact the local police department and Huffmaster security personnel for instructions. File a report. [Id., at CCI page 0019.]

In none of the instances in which the striking employees were disciplined, did anyone contact the Mattoon police department or file a report with the police.

Monday, December 10, 2010

On Monday, December 10, numerous pickets began arriving at the Rutledge site prior to 7:30 a.m. They gathered near the north exit to the parking lot leading to South 17th Street, which runs north to south. The south entrance to the lot was barricaded, so that traffic had to enter and exit the Rutledge parking lot

⁵ Flood, who continues to work for Respondent, did not testify in this proceeding. The incident report completed by Flood on December 11, 2012, is hearsay evidence and to the extent, if any, that it contradicts Maxwell, I do not credit it. Frank Fetchak did not contradict Maxwell's testimony in any material way; thus, I credit Maxwell's account of the incident.

⁶ Huffmaster is the security company hired by Respondent during the strike.

at the north exit. The pickets were making a lot of noise by yelling and with air horns (deafening noise according to Police Chief Branson) and some were shaking picket signs at people entering the parking lot to report for work. Between 7:30 and 8:30 a.m., Jeffrey Branson, the chief of the Mattoon police department, arrived at Rutledge. He found that picketers were congregating in the roadway on 17th Street. He informed the picketers and/or union officials that they could not do that; the picketers complied and got out of the roadway. He also cautioned a picketer who Respondent alleges was Eric Williamson, about getting too close to cars.⁷

Several Huffmaster security guards were stationed at the north entrance/exit and were controlling traffic into and out of the Rutledge parking lot and were stopping traffic on 17th Street to allow cars to exit the CCI lot. Branson went into the Rutledge Building and met with Sam Jurka and Michael Croy, two senior managers based in Mattoon. Croy called the Mattoon police frequently on Monday (Tr. 420). Croy is the direct supervisor of Pat Hudson and Brenda Weaver, the two employees whose discharges are at issue in this case. There were a number of people inside the building who were very upset. Branson observed several female employees who were crying. Croy was so angry that Branson tried to avoid talking to him; preferring to speak with Jurka instead. Croy complained to Branson about the speed at which cars were driving down 17th Street. Respondent conducted a meeting for workers at the Rutledge Building at about 8:30 a.m. because many were very upset and angry about the behavior of the pickets (Tr. 999-1000).

Pat Hudson/Brenda Weaver and the Sarah
Greider Incident

Nonstriker Sarah Greider is an employee communications coordinator. She normally works at a corporate building at 121 South 17th Street. However, during the strike she reported to the Rutledge Building. She attended the Huffmaster briefing on December 9.

At about 10 a.m. on December 10, Greider left the Rutledge Building to go to an 11 a.m. personal appointment in Champaign, Illinois. As she exited the building, Greider called her husband and put her phone on speaker (Tr. 1087). She rolled

down her car windows a bit and told her husband that she wanted him to listen to the pickets. As Greider approached 17th Street, a Huffmaster guard briefly stopped her car to allow Pat Hudson to pass by the exit in her car (Tr. 1067). Then the guard put his hand up and stopped Brenda Weaver, who was behind Hudson, to allow Greider to exit the parking lot (Exh. R-1; Tr. 309-311, 1067-1068, 1075-1077). Then the guard allowed Weaver to proceed. For a distance of 135 to 165 feet, Greider's car was between Hudson's and Weaver's.

There is absolutely no basis for questioning the testimony of Hudson and Weaver that they were on their way from Rutledge to the corporate building to picket at the latter site. There is absolutely no basis for concluding that Greider's car ended up between Hudson and Weaver's vehicles other than by coincidence and the traffic control actions of the Huffmaster guard. There is no basis for concluding that Hudson and Weaver intentionally blocked Greider's car in.⁸

As soon as Greider noticed Weaver behind her, she became angry and said to her husband, "You are not going to believe what these bitches are doing to me" (Tr. 1079). Pickets were next to Greider's car on both sides of 17th Street and further north (Tr. 1081). 17th Street, which is 22-feet wide and whose pavement is unmarked, had been reduced to one lane. Greider could not pass Hudson safely on 17th. Hudson was driving very slowly. There is no evidence that she did so to harass or annoy Greider. Greider put on her turn signal and turned left into the first entrance to the parking lot of the Pilson Automobile dealership, 135 to 165 feet from where she turned onto 17th Street. Greider was afraid Weaver was going to follow her, but noticed that Weaver did not turn into Pilson's.

After cutting through the Pilson's lot, Greider turned right onto Land Lake Boulevard (a/k/a Rt. 121/45) and drove to Charleston Avenue (Rt. 16), the main road between Mattoon and Charleston, Illinois. On Charleston Avenue she turned right towards the East and Interstate 57, which is a north-south highway. Greider turned north on I-57 and proceeded to Champaign.

On Charleston Avenue, Hudson and Weaver passed Greider driving east before Greider reached the Interstate. Although she testified that she did not know whether Hudson and Weaver saw her, Greider told her husband that the two unit employees had followed her or caught up to her.

Greider called Respondent's command center and reported that Hudson and Weaver blocked her in, as soon as she got off the phone with her husband (Tr. 1059). Greider's coworker, Jonell Rich, also a nonstriker, texted Greider that she saw what Hudson did to her. When Greider returned from her appointment in Champaign, between 12:30 and 1 p.m., Gary Patrem asked her to fill out an incident report (GC Exh. 16). She described what happened to a group of people in the command center including Patrem and Ryan Whitlock. Respondent's director of employee and labor relations on December 10 (Tr. 428-429, 1063).⁹ The next day, Greider also spoke to Re-

⁷ Chief Branson also testified about talking to a picket, who was a "hothead." It is not at all clear to me that this was Williamson. The chief's description of this individual at Tr. 558 does not comport with the picture of Williamson in Exh. R-10. The chief described the hothead as almost bald. In the photo of Williamson in Exh. R-10, from which Branson identified Williamson, he is wearing a San Francisco 49ers cap and a hood. It was cold on December 10, about 30 degrees Fahrenheit, and there is no evidence that Williamson took his cap and hood off at any time that day. My recollection of Williamson, who testified, is that he is not almost bald. Indeed, I have skepticism as to the accuracy of Chief Branson's testimony at Tr. 1113, identifying Williamson as the person he spoke to on December 10.

I find that there is no probative value to the testimony of police officer Eric Finley. Finley did not see the incident for which Williamson was disciplined. Williamson testified that he spoke to officer Scott Robison after the incident. Officer Robison did not testify. Moreover, the individual Finley identified as the person to whom he spoke, in Exh. R-10(a) and (b); Tr. 1104, is not Williamson.

⁸ Greider conceded that Hudson may have been waiting for Weaver, Tr. 1056-1057.

⁹ At Tr. 1062-1063, Greider indicated that she had discussions with Whitlock when she returned to the Rutledge Building on December 10.

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spondent's chief executive officer, Robert Curry. Greider told Curry that she was blocked in for a minute, for about 100 feet, and may have told Curry that she thought she was being followed (Tr. 1063-1064, 1077). She did not tell Curry that Hudson was starting and stopping in front of her.

Greider filled out a Huffmaster incident form on December 12 (GC Exh. 12). She listed Jonell Rich as a witness to this incident. Nobody from management talked to Rich about the Greider incident until February 14, 2013.¹⁰ In her report, Greider stated that, "Pat refused to move or moved very slowly." She did not allege that Hudson was stopping and starting as she did at Transcript 1057. There is no evidence that Greider made such a claim at the command center in front of Gary Patrem and Ryan Whitlock either (Tr. 283-287, 428-429). I find there is no credible evidence that Hudson was stop/starting while in front of Greider (see Exh. R-1 (a video); Tr. 309-316). To the contrary, I find that the testimony of Greider and Jonell Rich to this effect is solely the result on their animus towards Hudson, arising at least in part from the strike.

Finally, as Respondent notes in footnote 25 at page 47 of its brief, the conduct with which Hudson and Weaver are accused is, according to the Mattoon police chief, a police matter. Despite this, neither Respondent nor Greider reported the incident to the Mattoon police, even though Mike Croy called the city police several times the same morning (Tr. 420).

I also rely on the fact that Bernice Dasenbrock, a witness called by Respondent, testified that she saw Greider "in the road, and she turned left and went into Pilson's parking lot" (Tr. 1202). Her testimony as to how much of the incident she observed is somewhat ambiguous (Tr. 1184), but she certainly did not notice Hudson or Weaver harassing Greider, or anything else unusual.

In summary, I find that the record establishes there was absolutely no misconduct by either Hudson or Weaver with regard to Greider. In so finding, I also rely in part of the fact that Greider did not file a police report as she had been instructed prior to this incident.

Hudson/Weaver and the Troy Conley Incident

Prior to December 10, the Union advised the strikers that they could picket at commercial sites at which replacement employees were performing work. This was described to the employees as "ambulatory picketing." After Sarah Greider turned into the Pilson's Auto lot, Hudson, with Weaver behind her, drove by a park where they believed some company work trucks were parked. Not seeing any company vehicles they drove down 14th Street with the intention of picketing the cen-

tral office, the 1501 building, at Charleston Avenue and 15th Street. This is about 1-1/2 miles from Rutledge. Hudson then noticed a company van driving east on Charleston Avenue. She decided to turn right and follow the van rather than turn left towards Respondent's central office. Weaver followed Hudson in her automobile.

Hudson testified that she intended to follow the truck to determine whether it was going to a commercial worksite. If so, she testified that she intended to inform union officials so that they could decide whether or not to picket at that site.

Once Hudson and Weaver turned east onto Charleston Avenue, after another 1-1/2 miles they passed Greider. Shortly thereafter they passed under I-57 and caught up to the van which was driven by Troy Conley, Respondent's director of network engineering, near a BP gas station. Conley and his passenger, Larry Diggs, a manager from Texas, were on their way to repair a commercial wireless tower in Charleston. The parties stipulated that it is about 3 miles from the BP station to the Road 1200 E, where Conley testified he turned south off of Route 16.

Since this is the only incident by which Respondent could possibly justify the discharge of Hudson and Weaver, it is important to analyze the testimony of the four individuals with firsthand knowledge, particularly where it conflicts. While I recognize that the testimony of Hudson and Weaver is self-serving and thus should be approached with some degree of caution, the same is also true with regard to Troy Conley, and to some extent Larry Diggs.

Respondent asserts that the fact that neither Hudson nor Weaver made any statements in their defense at the suspension and termination meetings in December should be weighed against them in making credibility determinations.¹¹ Despite the fact that Respondent provided little in the way of specifics at the suspension meetings, I question whether it was wise for Hudson and Weaver to remain silent. However, their silence has very little relevance in resolving credibility. The credibility issues can be resolved largely on the basis of the testimony of Respondent's witnesses, their consistency with the contemporaneous reports they filed and the consistency of Respondent's witnesses with each other.

Conley is a manager who understands that his employer terminated Hudson and Weaver and that his employer would very much like them to remain terminated. Moreover, it is quite clear that many of Respondent's managers were very angry about the strike and the conduct of the strikers at Rutledge. Conley is likely to have been angry about the fact that Hudson and Weaver were following him.

Witness Testimony and Credibility Resolutions

Conley testified that he first noticed Weaver, who had passed Hudson, three quarters to a half-mile east of the BP station which is located just east of I-57, at the intersection of Route 16 and Miller Road. However, he also testified that it was a half a

At Tr. 1073-1074, she testified that Whitlock was in the area when she was describing the incident to others. This comports with Whitlock's testimony.

¹⁰ I give no weight to Rich's testimony regarding the Greider incident. In addition to the fact that she was first interviewed 2 months after the incident, her testimony is inconsistent on material matters. It is also clear that with respect to the Greider incident and the Rankin incident, Rich's recollection is either inaccurate or incomplete. As to inconsistency, at Tr. 1120, Rich testified that she did not know if Hudson came to a complete stop in front of Greider. Tr. 1120, and then changed her testimony at Tr. 1135-1137.

¹¹ Weaver denied noticing Greider's car in front of her at her termination meeting on December 17. I credit that testimony because there was no reason for her to notice which car the Huffmaster guard let out of the parking lot in front of her.

mile or less than that (Tr. 874-875). This is about 1-1/2 miles from where Hudson and Weaver began to follow him.

Where Conley first saw Weaver is significant in determining how far and for how long he was "trapped" behind Hudson, or alternatively, merely prevented from passing Hudson and Weaver (assuming this was the case). Both Hudson and Weaver testified that they passed Conley near the Sarah Bush Hospital or even further east on Charleston Avenue.¹² If Conley did not see Weaver for three quarters or a half a mile and then a minute passed before he saw Hudson, as he testified at Transcript 877-878, this would indicate that Hudson and Weaver's testimony is more accurate than Conley's. I credit Hudson and Weaver that Hudson passed Conley in the area of the Sarah Bush Hospital or further east.

Conley testified that Weaver honked at him, signaled, and then got into the right lane in front of him. He noticed a picket sign in her car. According to Conley, Weaver did not loiter next to him and got into the right lane at a safe distance in front of him.¹³ At this time, Conley did not see Hudson (Tr. 877). This leads me to conclude that he could have passed Weaver at this point, if he chose to do so. Charleston Avenue at this point is a divided highway with two lanes in each direction (see Jt. Exhs. 9A & B).

Conley testified that less than 1 minute later, Hudson passed him (Tr. 877-878), motioned to Weaver and that both Hudson and Weaver slowed down. Conley stated he moved into the left lane but that Hudson stayed in the left lane and thus he could not pass. Then he went back into the right lane behind Weaver. Conley does not know the speed at which any of the cars were travelling. He conceded that Weaver and Hudson could have been travelling at the speed limit. The speed limit on Rt. 16 east of I-57 is 55 mph in most places, but is 45 or 50 mph near a stop light at Loxa Road (which might explain why Hudson and Weaver slowed down) (Tr. 322). Conley is not sure that he ever put on his brakes at this point (Tr. 882). At one point on Route 16, Conley was driving at 69 miles per hour; 14 mph over the speed limit. Thus, it is possible that Hudson was driving at the speed limit or over it when Conley slowed down behind her, if he did so (Tr. 583-584).

On cross-examination, Conley was somewhat tentative about where Hudson first pulled parallel to Weaver. In response to the General Counsel, Conley testified that he did not think this occurred as far east as the Sarah Bush Hospital, which would be about 1-1/2 miles at most from where he testified that he

turned south (Tr. 881-883, 888). However, if Conley was boxed in west of Sarah Bush, he could have avoided travelling behind Hudson and Weaver by turning north into the road leading to Sarah Bush, south into the Airport Road or a little further east on Loxa Road, either north or south (Tr. 905-912).

At some point, according to Conley, three cars came up behind Hudson in the left lane and she moved into the right lane to allow them to pass her. Conley testified that he signaled left, moved back into the left lane, but could not pass because Hudson moved back into the left lane. She denies this (Tr. 780-786). Hudson testified that she passed Conley and Weaver and then moved into the right lane in front of Weaver. Further, she testified that she did not move back into the left lane and that Conley did not try to pass her before he turned south. I credit Conley to the extent that at some point he was in the left lane on Route 16 behind Hudson.

Conley testified he applied his brakes when getting behind Hudson in the left lane, but did not slam them on. He does not recall whether or not Hudson signaled before moving back into the left lane (Tr. 892). Conley did not believe Hudson nearly caused an accident when she moved back into the left lane.

Conley's passenger, Lawrence Diggs, testified that when Hudson pulled back into the left lane, Conley had not begun to try to pass Weaver (Tr. 966-967). This corroborates the testimony of Hudson and Weaver that Hudson never "cut off" Conley. I credit Hudson that she did not do so.

Conley testified that he got back into the right lane prior to Loxa Rd. (County Road 1100) and turned right (south) on Road 1200 E.¹⁴ He did not see Hudson or Weaver after that.

Conley does not know how long he was in the left lane behind Hudson (Tr. 888). Similarly, Lawrence Diggs did not offer any testimony as to how long or for what distance Conley was behind Hudson in the left lane or was prevented from passing. Diggs also did not corroborate (or refute) Conley's testimony that Conley had to drive an extra 4.97 miles to reach the jobsite. However, if, as Conley testified, he got back into the right lane prior to Loxa Road, Conley could have turned right

¹² Hudson's and Weaver's testimony differs from Conley's regarding the location where they passed Conley. They both testified, as did Conley, that they caught up to Conley's truck near the BP station at Miller Road. Both testified that Weaver passed Conley near Sarah Bush Hospital or further east, Tr. 613, 780. The airport entrance and Sarah Bush are located fairly close to one another about 1-1/2 miles east of the BP station; one half mile west of Loxa Road (County Road 1100 E) and 1-1/2 miles west of County Road 1200 E. The airport entrance is on the right as one drives east; Sarah Bush is on the left.

¹³ When testifying, Conley apparently abandoned his contention that Weaver "cut in front" of him as he wrote in his Huffmaster statement. Alternatively, when he used the word "cut" in that statement he meant nothing more than Weaver and Hudson changed lanes in front of him. GC Exh. 16, Tr. 877.

¹⁴ I take judicial notice of Google Maps, which were introduced and relied upon by Respondent, Tr. 868; R. Exh. 6. Google Maps, which are much clearer than the one introduced as R. Exh. 6 show that Loxa Road is also County Road 1100. They also show that Old State Rd. intersects with County Road 1100 south of Rt. 16 and that one can drive back to Rt. 16 and towards Charleston by going south on Loxa and then heading to the northeast on Old State Road.

Google Maps also show that one can turn left at County Road 1050 E that leads to Sarah Bush Hospital and then turn right on Dewitt Avenue (County Road 800 N) to get to Loxa Road north of Rt. 16. A driver would then have to turn south on Loxa to return to Rt. 16 or drive further south to pick up Old State Road to Charleston.

There is also an airport road on the south side of Rt. 16, which would allow a driver to essentially pass a bottleneck on Rt. 16 at some points and come out further east on Rt. 16. Thus, there was no need for Conley to remain boxed in by Hudson and Weaver if Hudson got into the left lane much west of Sarah Bush.

Weaver testified as Conley did, that he turned south on County Road 1200, Tr. 659-662; Hudson testified Conley turned at Loxa, Tr. 789. Respondent's GPS records might show which is correct, Tr. 384. Regardless, I find there is no credible evidence that Conley was stuck behind Hudson and Weaver for several miles.

or left (north or south) on Loxa rather than continue on Route 16 for another mile to County Road 1200 E, as he testified.

Conley completed a Huffmaster report (Exh. 16.) Unlike the other Huffmaster reports in this record, Conley's is undated. Conley testified that he "believes" he was directed to fill out this report on December 11.¹⁵ In that report, he states:

Traveling eastbound on Hwy 16 between Mattoon and Charleston car # 1 (Plate Weave 9) approached in passing lane honking horn (pick sign on passenger side seat) and cut in front of company truck and slowed speed. Another car approached (Driver Pat Hudson) and paralleled [sic] the first car, both slowing. I proceeded to pass with other traffic and (Pat Hudson) car # 2 cut back in front of me slowing down creating a blockade to the front. After several miles, I turned south on county road and rerouted to Charleston.¹⁶

In this account, Conley did not specify on which county road he turned south. Similarly, there is nothing in his statement about driving 4.97 miles out of the way to get to the cell tower. I find that Hudson prevented Conley from passing him by staying in the left lane, for a mile or less and not more than 1 minute. If Conley had been blocked in for any significant period of time, Lawrence Diggs would remember this. The fact that he does not leads me to credit Hudson and Weaver that they did not block Conley in for any significant distance or period of time.

A major reason I credit Hudson and Weaver over Conley is the fact that Conley did not bother to report this incident to the police as he had been instructed. Conley testified that he called Sam Jurka after the incident on the telephone (Tr. 871-872). Thus, Conley could have called the police or had Diggs call the police if Hudson and/or Weaver were doing anything dangerous or illegal. In making credibility resolutions regarding this incident, it is very significant that Conley did not contact the police. Jurka did not testify and there is no evidence as to what Conley told Jurka. Jurka apparently did not take any notes. It is also significant that Jurka did not call the police. The fact that he did not do so is notable because he was working the

¹⁵ I have doubts as to when Conley filled out his Huffmaster report. Conley "believes" he did so on December 11, Tr. 894. Patrem "believes" he directed Conley to fill out the report, Tr. 329, but also testified that he did not interview, or talk to Conley directly, Tr. 305-306, 317-319. Patrem is also unaware of any other manager speaking to Conley, Tr. 330.

Conley testified that he believes that Jurka, who did not testify, told him to fill out the report on December 10, Tr. 895. Conley's incident report was presented to Hudson, Weaver, and the Union at the termination meetings on December 17.

¹⁶ In this account, Conley did not contend that Weaver and Hudson drove parallel to each other "for some time" as asserted in R. Br. at p. 30, or by Conley in response to a leading question at Tr. 865-866. He also did not assert that he tried to pass Hudson twice as he did at Tr. 866. Diggs testified to only one attempt by Conley to pass Hudson, Tr. 957, 964-968. I do not credit Conley's testimony that he tried to pass Hudson twice.

Lawrence Diggs also had no recollection of how long it was before Hudson pulled in front of Weaver in the right lane. I do not credit Conley's testimony regarding the period of time that Hudson and Weaver were parallel to each other.

morning of December 10 with Mike Croy, who called the police on numerous occasions. If Conley related to Jurka that Hudson and Weaver were endangering him and/others on Highway 16; one would think Jurka or Conley would call the Mattoon police since they had Hudson and Weaver's license plate numbers (GC Exh. 16).

Conley also testified that he spoke to Gary Patrem twice about the incident twice prior to Hudson and Weaver's discharge (Tr. 894-895). Patrem testified that he never discussed the incident with Conley or Diggs (Tr. 317-318). This raises some doubt as to the recollections and/or credibility of one or the other, or both. If Conley did discuss the incident with Patrem, there is no evidence as to what was said.

Conley and HR Director Whitlock had a discussion about this incident apparently prior to Hudson and Weaver being discharged (Tr. 900-903, 430-438). Whitlock's account, which appears to be inaccurate in at least so far as Larry Diggs' presence is concerned, contains nothing about how long or how far the incident lasted, which road Conley turned off onto and the route Conley took to get to the worksite. There is no written record of any communication between Whitlock and Conley. Nobody apparently advised Conley to contact the police per the Huffmaster instructions.

Lawrence Diggs' Testimony

Lawrence Diggs, a manager from Texas, was Conley's passenger. Diggs returned to Texas on Friday, December 14. He testified that he spoke to nobody in management about the incident between December 10, 2012, and late July or August 2013 (Tr. 959-960, 968-969). This contradicts Ryan Whitlock's testimony at Transcript 428. Diggs never saw Conley's incident report, which lists him as a witness, nor was he present if Conley spoke to Gary Patrem and Ryan Whitlock in December. The fact that nobody from management interviewed Diggs or took a statement from him undercuts Respondent's contentions as to how serious it considered the alleged misconduct of Hudson and Weaver.

Diggs did not testify about the most disputed facts regarding this incident, which are where on Route 16 Conley was prevented from passing, how long he was prevented from passing and where he turned south to get off of Route 16. I find this very significant in making a credibility resolution between Conley on the one hand and Weaver and Hudson on the other. If something very usual happened, such as Weaver and Hudson driving for 1-1/2 miles in a manner that Conley could not pass them, I would think that Diggs, a witness favorably disposed to Respondent would remember it. Thus, I conclude that this did not happen.

There is also probative value to Diggs' testimony in that he did not recall seeing Weaver's brakes lights when she pulled into the right lane in front of Conley and his concession that Weaver and Hudson may have been driving at the speed limit.

In summary, this record establishes that Weaver engaged in absolutely no misconduct with regard to Conley. Assuming there was misconduct, it was, insubstantial: honking, passing Conley, and switching into the right lane in front of him. Similarly, misconduct by Hudson, if any, provides no justification for Hudson's discharge. Neither Hudson nor Weaver commit-

ted an act of violence, nor has Respondent demonstrated that either violated any company policy regarding employee conduct.

Hudson/Weaver and the Kurt Rankin Incident

After Hudson and Weaver lost sight of Conley they returned to the corporate building. Weaver parked and got into the back seat of Hudson's car. Another employee got into the front passenger seat. Hudson then drove south on 17th Street past the Rutledge Building waving and greeting the pickets at that site. She then turned around and headed north.

As Hudson drove north, at about 11:36 a.m., Kurt Rankin, Respondent's director of network operations, was approaching the north exit of the Rutledge parking lot in his vehicle. He had just left a meeting at Rutledge and was on his way to 1501 Charleston, where he normally works.

Huffmaster guards were controlling traffic in and out of the lot and on 17th Street near the exit. A Huffmaster guard held Rankin up while Hudson passed the exit. Then Rankin turned right behind Hudson, who was driving very slowly. There were pickets on both sides of 17th Street with barely enough room for two cars abreast. There were also people on the roadway on 17th Street. A four-wheel drive vehicle with picketers in the back approached Hudson from the north and stopped beside Rankin's vehicle as he drove north.

There is no evidence that Rankin could not have turned into the Pilson's lot and cut through to Landlake Boulevard as Greider had done about an hour previous to this incident. Instead he drove past two entrances to the lot and then sped past Hudson on her left on 17th Street.

On December 10, Rankin returned to the Rutledge Building and requested a Huffmaster incident report. He filled it out, and then reviewed it with Phillip Donahue of Huffmaster on December 12. He did not talk to anyone in management about the incident.

On the cover of the incident report (GC Exh. 16), Rankin listed two suspects, Hudson and Weaver. The latter was mentioned because he saw Weaver in the back seat of Hudson's vehicle. Contrary to Respondent's assertion in discharging Weaver, it is 100-percent certain that she was not in a vehicle behind Rankin.¹⁷ Rankin's description of the incident in his Huffmaster report, which is the only evidence relied upon by Respondent in terminating both employees in part for this event is as follows:

When pulling out of company parking lot a vehicle pulled in front of my vehicle and a vehicle was behind me blocking me on a one lane path unable to pull forward or backwards. The vehicle proceeded to move very very slow and at some times stopped when strikers continued to yell, scream and whistle. I was unable to pass the vehicle in order to get out of the com-

promising situation. I felt totally threatened, vulnerable and trapped. It was only when there were no vehicles on the side of the roadway that I was able to pass the vehicle.

At trial, Rankin added some details not contained in his statement. He testified that strikers signaled to Pat Hudson to get in front of him, a contention for which there is no evidence other than his testimony. I find this to be untrue. It is clear that Hudson was in front of Rankin only because the Huffmaster guard prevented him from turning onto 17th Street in front of her.

Rankin testified that Hudson moved to the left of the road to block him from passing. This is also an allegation not contained in his statement, which I do not credit as a result. On the other hand, Rankin's testimony that he passed Hudson's vehicle only when there were no cars on the side of the street supports her testimony that she was driving very slowly because of the parked cars and people in the street; not to harass Rankin.

The record establishes that neither Hudson nor Weaver committed any act of workplace violence regarding Rankin, nor did they violate any CCI policy regarding employee conduct. In so finding, I rely in part of the fact that no police reports were filed for their conduct, such as stop/starting in front of vehicles, which is clearly illegal.

Respondent's Other Witnesses to the Rankin Incident

Tara Walters, Jonell Rich, and Bernice Dasenbrock testified that they observed this incident from the second floor of the Rutledge Building (Tr. 1028, 1122-1122, 1178). Walters did not see Hudson swerve (Tr. 1049). Assuming Hudson's car moved laterally there is no basis for concluding she did so to harass Rankin. It is just as likely that she did so to avoid hitting cars, people or in reaction to the truck coming towards her from the north. Neither Walters nor Jonell Rich saw anything that prevented Rankin from turning into the Pilson's lot, as Greider did an hour earlier to avoid travelling behind Hudson (Tr. 1035, 1137-1138).

However, neither Walters, nor Rich, nor Dasenbrock are particularly reliable witnesses as to what transpired. Not one of them remembered the truck or car passing Hudson and Rankin going south. Rankin, Weaver, and Hudson all testified that this occurred while Rankin was behind Hudson or trying to pass (Tr. 466-467, 622, 790). Dasenbrock's testimony that Hudson stopped and blocked Rankin at the exit to the parking lot (Tr. 1186-1189) is clearly inaccurate. The video evidence (Exh. R-1), clearly shows this did not occur. Dasenbrock and Rich's testimony regarding the Rankin incident is inconsistent in several material respects.

Moreover, Rich was not interviewed about it by anyone until February 14, 2013, and then only about the Greider incident (Tr. 1144). In fact, there is no credible evidence as to when anyone discussed the Rankin incident with any one of the three women. This raises doubt in my mind as to what they actually remember or observed about the Rankin incident. Gary Patrem's testimony is that he discussed the Greider incident with Rich, Walters, and Dasenbrock; there is no evidence as to when anybody from management first discussed the Rankin incident with them (Tr. 351-353, 441-442).

¹⁷ Quite surprising for witnesses who wish to be credited, both Gary Patrem and Ryan Whitlock testified that they still believe that Weaver was in an automobile behind Rankin, Tr. 238-239, 444.

None of Respondent's other witnesses to this incident saw any vehicle behind Rankin. Respondent's witness, Tara Walters, testified that she did not see Hudson stop/start as alleged by Rankin, Tr. 1032; Exh. R-1, the Huffmaster video, doesn't show this either although it cuts off while Rankin was still behind Hudson on 17th Street, Tr. 242, 252, 277.

Rankin did not identify any witnesses to his encounter with Hudson on his Huffmaster report, whereas Greider identified Rich. Rankin also did not orally identify Walters, Rich, or Dasenbrock as witnesses to the incident (Tr. 457–458). In the termination meeting for Weaver on December 17, Gary Patrem discussed Rich as a witness to the Greider incident, not the Rankin incident (GC Exh. 23). His testimony indicates that he only relied on Rankin's Huffmaster report in factoring in the Rankin incident in determining that Hudson and Weaver had engaged in misconduct regarding Rankin (Tr. 353). Ryan Whitlock's testimony also indicates that Respondent's information about the Rankin incident as of December 17, was limited to Rankin's Huffmaster report and Huffmaster's video recording of part of the incident (Tr. 442).

Dasenbrock's testimony at Transcript 1200–1201, that she spoke to Patrem about the Rankin incident in the presence of Tara Walters on December 10 is not corroborated by any other of Respondent's witnesses. I do not credit this testimony. The Charging Party's brief at page 23 is incorrect in stating that Tara Walters testified that she spoke to Gary Patrem about the Rankin incident. To the contrary, Walters testified that she spoke about it, "just with the girls in my pod" (Tr. 1028).

In its January 4, 2013 response to the Union's information request of December 17, Respondent did not identify any witnesses to any of the incidents other than those identified in the Huffmaster reports (Exhs. U-1 and 2).

Gary Patrem told the Union at the suspension or termination meetings that Rich, Walters, and Dasenbrock were witnesses to the Greider incident, and apparently did not mention that they witnessed the Rankin incident (Tr. 288–289). However, Walters testified that she did not see the Greider incident, and Dasenbrock testified she only saw part of it and never spoke to Patrem about it (Tr. 1028, 1184, 1203).

It is not uncommon for witness to testify about events that occurred months previously. However, Walters, Rich, and Dasenbrock were not participants in the Rankin incident, which lasted for a very brief period and it did not affect them personally. Many of the customer service representatives were very upset about the conduct of the strikers. Rich was certainly one of those, give her assumptions about Pat Hudson's motives while driving in front of Greider and Rankin. By the time of anyone talked to Walters about the Rankin incident, she certainly was upset about her encounter with Eric Williamson on December 11.

Incidents for which Eric Williamson was Suspended for 2 Days

Contact with Dawn Redfern's Car Mirror

Eric Williamson is a switchman who had been working for CCI for 12 years prior to December 2012. Respondent had not disciplined him prior to December 13, 2012. During the strike, Williamson picketed every day for 12 hours 6:30 a.m. to 6:30 p.m., except Sunday, December 9, when he was on the picket line for about 7 hours. On Friday, he picketed at the corporate headquarters, but on subsequent days he was picketing at the Rutledge Building.

On the evening of December 10, workers at the Rutledge Building were advised to leave the parking lot in a caravan.

Customer Service Representative Dawn Redfern was fifth in line when the caravan started to pull out of the parking lot at about 5 p.m. Picketers were standing very close to the cars as they exited the lot.

As Redfern turned right onto 17th Street, she heard a loud smack. Redfern stopped, turned on the interior light, and rolled down the window. She noticed that the mirror on the passenger side of her car had folded in.

She addressed a picket, later identified as Eric Williamson, and said that he had hit her car. Williamson responded that Redfern had hit him. It is not clear whether Williamson moved closer to the car as Redfern turned, or whether Redfern turned more sharply than other cars. In any event, there is no evidence that Williamson intentionally struck the mirror. Redfern never told anyone that she thought that Williamson struck her mirror intentionally. In fact, she testified that Williamson could have come in contact with her mirror accidentally.

A Huffmaster guard advised Redfern to continue driving. She called her supervisor and a coworker about the incident and they agreed to meet at a CITGO gas station. At the gas station, Redfern checked her car for damage and saw none. When she arrived at her house, Redfern's husband folded the mirror back into place.

Redfern's supervisor advised her to call management at the Rutledge Building. She did so and spoke to Sam Jurka, who advised her to report the incident to the police. Redfern did not do so. On December 11, Redfern met Gary Patrem, who drove her to work. They discussed the mirror incident. Redfern told Patrem that there was no damage to her car.

Obscene Gesture

On Tuesday, December 11, Tara Walters, another customer service representative, arrived at work at about 7:20 a.m. She looked towards a group of picketers and saw Eric Williamson grab his crotch.¹⁸ Williamson was facing her but far enough away that Walters could not tell if he made eye contact with her (Tr. 1038).

Walters did not report the incident to management. She did mention it to coworkers on Tuesday. On Wednesday, December 12, Walters' supervisor, Mary Beth White, asked Walters if she wished to fill out an incident report. Walters answered affirmatively. She filled out a Huffmaster report in which she stated, "Eric Williamson, a picketer, grabbed his crotch towards me." Walters also filled out a CCI report stating that Williamson turned and grabbed his crotch (GC Exh. 13).

Walters' testimony at trial was somewhat inconsistent as whether Williamson was intentionally making an obscene gesture directed towards her.

At Transcript 1024, Walters testified that Williamson "grabbed himself, lifted up as a mean, hateful gesture." She testified further that she thought so because "it was the demeanor. It was a big handful of crotch, and the way he lifted it up. He wasn't shifting it to the side."

¹⁸ Williamson denies doing so. He testified that he yelled scab when Walters parked and that is all, Tr. 712–716. Williamson and Walters were casual acquaintances outside of work. I find that Walters did not make this incident up and she saw Williamson move his hand to his crotch.

However, on redirect by Respondent's counsel, Walters backed off from her testimony on direct:

Q. You understand all the questions about looked at, looked towards, looked in the direction?

A. Yes.

Q. Do you understand, do you see a distinction between the three?

A. No, because I can say we did not make eye contact.

Q. Okay.

A. I know that for sure. He was looking in my direction. I was the only one out there, so I would say he was looking at me, but he could have been looking past me.

Q. Okay.

Q. BY JUDGE AMCHAN: Are you sure that the gesture was directed at you?

A. I cannot be positive, but I was the only one in my area where he was looking at. [Tr. 1048-1049.]

Nevertheless, since Williamson testified that he addressed the epithet "scab" at Walters, I find that he grabbed his crotch as a hostile gesture directed at her.

On December 18, Respondent informed Williamson that he was receiving a 2-day suspension for workplace violence and sexual harassment.

Alleged 8(a)(5) Violation: Unilaterally Combining the Position of Office Specialist in the Fleet Department (Hudson's position) with the Position of Office Specialist in the Facilities Department (Weaver's Position)¹⁹

In January or February 2013, Respondent decided to fill Pat Hudson's job as office specialist in the fleet department, but not Weaver's job in the facilities department. A unit employee, Heather Winkleblack, was awarded the job in the fleet department. The Union was not notified until February 26 that Respondent was not filling the position of office specialist in the facilities department. Respondent assigned some of the duties formerly performed by Weaver to Winkleblack. Respondent did not provide the Union with advance notice or an opportunity to bargain about its decision not to fill Weaver's position, which reduced the number of bargaining unit members by one. The collective-bargaining agreement that expired in November 2012 did not require Respondent to replace a terminated employee.

On March 1, the Union demanded in writing a return to the status quo and bargaining over the change (Jt. Exh. 2). On April 18, 2013, Respondent advised the Union that it was transferring some of Weaver's former duties outside the bargaining unit on June 19.

Respondent concedes at page 64 of its brief that it must return Brenda Weaver to her prior or similar position if her termination is found to violate the Act. In light of the fact that I do find that her termination violated the Act, I find it unnecessary to rule on whether Respondent otherwise violated the Act in not filling her position and transferring her duties to other employees.

¹⁹ This is also alleged as an 8(a)(3) and (4) violation.

Legal Analysis

Upon unconditional offers to return to work, former economic strikers are entitled to reinstatement to their former or substantially equivalent positions. One exception to this rule is that an employer may refuse to reinstate a former striker if the employer has a good-faith belief that the former striker engaged in strike misconduct that may reasonably tend to coerce or intimidate employees in the exercise of their Section 7 rights, including their right to refrain from striking or from supporting the strikers, *Clear Pine Mouldings*, 268 NLRB 1044 (1984), aff'd, 765 F.2d 148 (9th Cir. 1985), cert. denied 474 U.S. 1105 (1986).

Initially, the General Counsel must show that employee was a striker, and that the employer took action against the employee for conduct related to the strike, *Avery Heights*, 343 NLRB 1301, 1302 (2004). The burden has been met with regard to the all the allegations in this case. While there is no issue in this regard concerning Maxwell and Williamson, there may be with regard to Hudson and Weaver. However, I credit their testimony that they followed Troy Conley in order to determine whether he was going to perform bargaining unit work at a commercial site, so that the Union could decide whether to picket that worksite.

While it is peculiar that Hudson and Weaver would get ahead of Conley if they were following him to a worksite, they were keeping track of him in their rear view mirrors. I conclude that their conduct was strike related and protected, *Teamsters Local 807 (Schultz Refrigerated Service)*, 87 NLRB 502 (1949).

Respondent argues that the conduct of Hudson and Weaver was not strike related and is outside of the Board's purview. However, the fact that Respondent did not contact the police but rather dealt with this incident only through the procedures that it had established to deal with strike misconduct (filing a report with Huffmaster) belies this assertion. Finally, I would note that the Board has analyzed alleged driver conduct away from the picket line no differently than alleged misconduct at the picket line in a number of cases, including *Consolidated Supply Co.*, 192 NLRB 982, 988-989 (1971); *Osego Ski-Club*, 217 NLRB 408 (1975); *Gibraltar Sprocket Co.*, 241 NLRB 501, 502 (1979);²⁰ and *Federal Prescription Service*, 203 NLRB 975, 993 (1973), which are discussed in more detail below.

Once the General Counsel has shown that an employee or employees have been disciplined for strike-related conduct, the burden shifts to the employer to demonstrate that it had a honest belief that that the employee engaged in misconduct. As noted in *Avery Heights*, supra at 1303, Board precedent establishes "a relatively low threshold" for the employer on this issue. Basically, any information linking the misconduct to the accused employee will satisfy the employer's burden. It need not even interview that employee. It is also not clear whether the employer must show that it had an honest belief that the misconduct was serious enough to warrant the discipline imposed. I need not spend a lot of time on this issue because with regard the all the instances in this case I find that the miscon-

²⁰ Cited in the Union's brief as *Advanced Pattern & Machine Corp.*

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duct either did not occur, or was not sufficiently egregious to warrant the discipline imposed.

However, there are serious issues as to whether Respondent had an honest belief that Weaver engaged in any misconduct. It did not even interview Rankin, who would have told management that Weaver was a passenger in the car in front of him; not the driver of any car which might have been behind him. Had it examined its own video evidence, it would have determined that Weaver was behind Greider because the Huffmaster guard stopped Weaver before Greider exited the parking lot. Had it interviewed Conley and Diggs, management would have known that Weaver did nothing more than pass Conley and pull into the right lane.

With regard to Williamson and the mirror incident, Respondent could easily have determined by interviewing Dawn Redfern that she had no reason to believe that Williamson contacted her car mirror intentionally.

With regard to Maxwell, had Respondent bothered to talk to its employee Frank Fetchak, it would have determined that there was no reason to conclude that Mike Maxwell intentionally struck Leon Flood's van and no reason to believe that Maxwell threatened Flood.

Finally, one can question whether Respondent had a good-faith belief that the conduct of Hudson and Weaver warranted discipline in inhibiting the travel of Greider and Rankin for a distance of a couple of hundred feet. There is no evidence of harassment in the Huffmaster videos, or in the Huffmaster statements of Greider and Rankin, which is all Respondent relied upon in disciplining the two women for these incidents.

Assuming that Respondent met its burden of showing an honest good-faith belief as to all these instances of misconduct, I find that the General Counsel met its burden of proving that the misconduct either did not occur or was insufficiently egregious to forfeit the protections of the Act, to wit:

Mike Maxwell did not intentionally strike Leon Flood's vehicle and did not threaten or intimidate Leon Flood. Flood inched forward and struck Maxwell. While Maxwell impeded Flood's exit from the Taylorsville parking lot for a very short period of time, he did not engage in the conduct for which he was suspended.

Brenda Weaver engaged in no misconduct at all. She was behind Greider only because the Huffmaster guard held her up to allow Greider to exit the Rutledge parking lot. Weaver's only involvement in the Rankin incident was sitting in the back seat of Hudson's car, which was in front of Rankin. Her involvement in the Conley incident was following him on Route 16, Charleston Boulevard, passing him and moving into the right lane in front of him. There is no credible evidence that she did anything threatening or dangerous. While Conley may have been intimidated by the fact that strikers were following him to his worksite, they had a protected right to do so. The Board has held, in circumstances far more egregious than the instant matter, that simply following a nonstriker, in the absence of violence, is insufficient to deprive a striker of the protections of the Act. *Gibraltar Sprocket Co.*, 241 NLRB 501, 502 (1979).

In *Gibraltar Sprocket*, the striker followed a nonstriker from the employer's plant, pulled alongside the nonstriker's car and

motioned to him to pull over. The nonstriking employee called the police who came and talked to him. When he left the police officer, the nonstrikers followed him again. On the way back to the employer's facility, the striker threw an empty beer can in the direction of the car of the employer's vice president, which missed. The Board found that the striker's misconduct was not sufficiently serious to warrant his termination and the employer's refusal to reinstate him. The Board noted that the record did not indicate that the striker drove dangerously close to the nonstriker or attempted to force him off the road. It also emphasized the lack of violent action on the part of the striker.

A similar case is *Otsego Ski-Club*, 217 NLRB 408, 409 fn. 4, 410, 413 (1975). Strikers in that case followed a supervisor's car on 2 days, honking the horn. There was a dispute as to how close they came to the supervisor's car, but they never drove alongside it or forced it off the road. Like Hudson's conduct, the strikers' conduct may have been annoying, but the Board found it was insufficiently aggravated to warrant their discharge for misconduct. Indeed, Member Fanning wrote a concurring opinion in part to emphasize this point.

In *Federal Prescription Service*, 203 NLRB 975, 993 (1973), the Board at page 976 footnote 4, agreed with the judge that two employees, who followed a nonstriker away from the strike line and to her home, did not engage in conduct that rendered them unfit for further employment.

In *Consolidated Supply Co.*, 192 NLRB 982, 988-989 (1971), the Board concluded that following an employer's truck or blocking it momentarily did not forfeit the protection of the Act, where as in the instant case, the striker did not endanger nonstriking employees.

Pat Hudson engaged in no misconduct with regard to Greider or Rankin. If she engaged in misconduct with regard to Conley, by preventing him from passing her, even if this was for 1-1/2 minutes and for 1-1/2 miles, this conduct was not egregious enough to warrant her termination, particularly in light of the fact that she was a 39-year employee with no prior disciplinary record.

Moreover, Respondent terminated Hudson for three incidents; not solely the Conley incident. With regard to the Greider and Rankin incidents, I find there was absolutely no misconduct by Hudson. Even assuming some degree of misconduct by Hudson in the Conley incident, any ambiguity as to whether it was serious enough to forfeit the protection of the Act should be resolved against Respondent.

Williamson engaged in no misconduct by coming into contact with Dawn Redfern's mirror. He did engage in misconduct by grabbing his crotch and making an obscene gesture directed at Tara Walters.

Once the Employer has established a good-faith belief of striker misconduct, the burden shifts to the General Counsel to show that the striker did not engage in the misconduct or that it was not serious enough to deny the discriminatee the protection of the Act. *Clear Pine Mouldings*, supra. I also conclude that the General Counsel may prove that although misconduct occurred, it was not serious enough to warrant the level of discipline imposed.

The instances in which the Board has found that strikers have forfeited the protection of the Act in almost all cases in-

involve violent acts or threats of violent acts, which may reasonably tend to coerce or intimidate employees in the exercise of their Section 7 rights. In *Clear Pine Mouldings*, supra, strikers carried clubs, tire irons, baseball bats, and ax handles. One striker in fact swung a club at a nonstriker. In *Detroit Newspapers*, 340 NLRB 1019, 1028, 1030 (2003), the employer was found to have legally discharged one employee for vandalizing its property and another for taking part in an assault.

On the other hand, the Board has found employee misconduct not sufficiently egregious to forfeit the protection of the Act by hitting a foreman's car with cardboard picket signs in a brief incident not resulting in damage. *Medite of New Mexico, Inc.*, 314 NLRB 1145-1147 (1994).

There is no case that supports a discharge for the type of conduct engaged in by the discriminatees in this case. Even Williamson's gesture does not justify his suspension. The Board's decisions in *Briar Crest Nursing Home*, 333 NLRB 935, 937-938 (2001); *Callope Designs*, 297 NLRB 510, 521 (1989); *Universal Truss*, 348 NLRB 733, 780-781 (2006); and *General Chemical Corp.*, 290 NLRB 76, 83 (1988), lead to the conclusion that for a striking employee to forfeit the protection of the Act, an implied threat of bodily harm must accompany a vulgar or obscene gesture. Williamson's gesture certainly does not meet this standard.²¹

Williamson is an outside switchman and Walters is an office-bound customer service representative. While his gesture was totally uncalled for, and very unpleasant, it is difficult to see how it could have been perceived as an implied threat of violence or even future mistreatment (whatever that means) or have discouraged Walters from continuing to report to work during the strike. The cases cited by Respondent, *Romal Iron Works Corp.*, 285 NLRB 1178, 1182 (1987), and *Bonanza Sirloin Pit*, 275 NLRB 310 (1985), involve employer threats of retaliation to employees, couched in obscene language. These cases are not relevant to issues of striker misconduct.

Williamson's suspension was based on two incidents, one of which I find did not constitute misconduct. Therefore, even assuming that Williamson's conduct forfeited the protection of the Act, I conclude that it is Respondent's burden under the *Wright Line*²² doctrine to establish that it would have suspended Williamson solely on the basis of the Tara Walters incident. It has not done so, therefore. I find that his suspension violated Section 8(a)(3) and (1).

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(3) and (1) by discharging Brenda Weaver and Patricia Hudson on December 17, 2012.

²¹ Williamson's gesture cannot be legitimately characterized as "sexual harassment." In Title VII cases, a plaintiff generally cannot prevail on the basis on a single incident not involving physical contact, e.g., *Pomales v. Cellulares Telefonica*, 441 F.3d 79 (1st Cir. 2006). The record, herein, of course is barren as to whether Respondent has ever applied its sexual harassment policy, see GC Exh. 13, to a single incident not involving physical contact.

²² *Wright Line*, 251 NLRB 1083 (1980), enf'd 662 F.2d 899 (1st Cir. 1981); *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1123-1124 (2002).

2. Respondent violated Section 8(a)(3) and (1) by suspending Michael Maxwell and Eric Williamson in December 2012.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee(s) for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Latino Express, Inc.*, 359 NLRB 518 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The Respondent, Consolidated Communications, Inc., Mattoon and Taylorsville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, disciplining, refusing to recall, or otherwise discriminating against any employee for engaging in union or protected concerted activities, including participation in a strike.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Brenda Weaver and Patricia Hudson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of the Board's Order, rescind the December 2012 suspensions of Michael Maxwell and Eric Williamson.

(c) Make Brenda Weaver, Patricia Hudson, Michael Maxwell, and Eric Williamson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges of

²³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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Patricia Hudson and Brenda Weaver and the unlawful suspensions of Michael Maxwell and Eric Williamson, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges and suspensions will not be used against them in any way.

(e) Return the position of office specialist in the facilities department to the status quo that existed at the time of Brenda Weaver's discharge.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facilities in Mattoon and Taylorsville, Illinois, copies of the attached notice marked "Appendix."²⁴ Copies of the notice, on

forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 13, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 4, 2016

Decided September 13, 2016

No. 14-1135

CONSOLIDATED COMMUNICATIONS, INC., DOING BUSINESS AS
ILLINOIS CONSOLIDATED TELEPHONE COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO, LOCAL 702,
INTERVENOR

Consolidated with 14-1140

On Petition for Review and Cross-Application
for Enforcement of an Order
of the National Labor Relations Board

Robert T. Dumbacher argued the cause for petitioner.
With him on the briefs were *Kurt G. Larkin*, *David C.*
Lonergan, and *Amber M. Rogers*.

Joel A. Heller, Attorney, National Labor Relations Board, argued the cause for respondent. With him on the brief were *Richard F. Griffin, Jr.*, General Counsel, *John H. Ferguson*, Associate General Counsel, *Linda Dreeben*, Deputy Associate General Counsel, and *Jill A. Griffin*, Supervisory Attorney.

Christopher N. Grant argued the cause and filed the brief for intervenor.

Before: TATEL, BROWN, and MILLETT, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* MILLETT.

Concurring opinion filed by *Circuit Judge* MILLETT.

MILLETT, *Circuit Judge*: After collective-bargaining negotiations soured between Consolidated Communications, Inc. (“Consolidated”) and the International Brotherhood of Electrical Workers, AFL-CIO, Local 702 (“Union”), Union members launched a strike at several company facilities. After the dust settled and the strikers returned to work, Consolidated disciplined several employees for alleged misconduct during the strike and eliminated a workplace position held by a union worker. The National Labor Relations Board found that both Consolidated’s disciplinary actions and its unilateral elimination of a bargaining-unit position violated the National Labor Relations Act, 29 U.S.C. §§ 158(a)(1), (3) and (5). Consolidated now petitions for review of the Board’s decision, while the Board cross-petitions for enforcement of its order.

We enforce the portions of the Board’s order determining that Consolidated’s suspensions of Michael Maxwell and Eric Williamson, as well as the company’s elimination of the bargaining-unit position, violated the Act. However, we grant

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Consolidated's petition for review and deny cross-enforcement for that portion of the order addressing Consolidated's discharge of Patricia Hudson, and remand because the Board applied an erroneous legal standard in evaluating Hudson's strike misconduct.

I

Consolidated is a telecommunications company that provides commercial and residential telephone, television, and broadband services. The company maintains numerous facilities in Illinois, including a garage in Taylorville and a general warehouse known as the Rutledge Building on 17th Street in Mattoon. Consolidated's corporate headquarters is also in Mattoon.

The Union represents a unit of employees at Consolidated's Taylorville and Mattoon facilities whose work was covered by a collective-bargaining agreement that expired in November 2012. Numerous bargaining sessions for a new contract failed, and negotiations between Consolidated and the Union stalled. Union members then began a strike on December 6, 2012. Employees picketed at several company locations, including the Taylorville garage, the Rutledge Building, and the Mattoon corporate headquarters. The Union informed the strikers that they could also picket at any commercial sites where Consolidated employees were performing work, a practice known as "ambulatory picketing." J.A. 183.

During the strike, Consolidated continued to operate through the use of replacement workers, out-of-state employees, and managers. Consolidated hired the Huffmaster Security Company to guard the facilities, direct traffic across picket lines, and advise non-striking employees about how to conduct themselves during the strike. Non-striking

employees were instructed to be “extremely cautious in their dealing with strikers to ensure everyone’s safety” and to “[r]eport any incidents to the Command Center.” J.A. 59.

The strike lasted almost a week, with the strikers returning to work on December 13, 2012. In the course of the strike, Consolidated received written and verbal reports of six specific incidents of alleged misconduct by strikers Michael Maxwell, Patricia Hudson, Brenda Weaver, and Eric Williamson. After meeting individually with each employee, Consolidated suspended all four employees indefinitely without pay pending investigation of the allegations. Several days later, Consolidated confirmed two-day suspensions for Maxwell and Williamson and discharged Hudson and Weaver.

In early 2013, Consolidated decided to fill Hudson’s job as an Office Specialist in the Fleet Department, but not Weaver’s former position of Office Specialist in the Facilities Department. Consolidated assigned the Fleet Department job, as well as some of Weaver’s former duties, to another bargaining-unit employee. Consolidated did not notify or bargain with the Union in advance of those decisions. Upon learning of them, the Union immediately objected and demanded a return to the status quo and the opportunity to bargain over the changes. In April, Consolidated informed the Union that it was transferring some of Weaver’s former duties outside of the bargaining unit.

The Union filed unfair labor practice charges against Consolidated objecting to both the disciplinary actions and the unilateral elimination of a bargaining-unit position. The General Counsel for the Board subsequently issued a complaint alleging that Consolidated violated Sections 8(a)(3) and (1) of the Act, 29 U.S.C. §§ 158(a)(3) & (1), by

discharging Hudson and Weaver and suspending Maxwell and Williamson for alleged misconduct that the General Counsel alleged either did not occur or was insufficiently egregious to warrant such discipline. The complaint also alleged that Consolidated violated Sections 8(a)(5) and (1) of the Act, 29 U.S.C. §§ 158(a)(5) & (1), by eliminating a bargaining-unit position without notifying or bargaining with the Union.

The case was heard by a National Labor Relations Board Administrative Law Judge, who found that Consolidated acted unlawfully in disciplining Hudson, Weaver, Maxwell, and Williamson. The ALJ declined to rule on the Section 8(a)(5) claim pertaining to the eliminated unit position.

In July 2014, the Board affirmed the ALJ's rulings, findings, and conclusions. The Board also concluded that Consolidated violated Section 8(a)(5) by reassigning and eliminating the job duties of the Office Specialist-Facilities position without notice of bargaining.¹

II

On review, the Board's factual findings and application of law to those facts must be sustained if they are "supported by substantial evidence on the record considered as a whole." 29 U.S.C. § 160(e). While our review is deferential, we will not "rubber-stamp NLRB decisions," and we "examine carefully both the Board's findings and its reasoning." *Erie Brush & Mfg. Corp. v. NLRB*, 700 F.3d 17, 21 (D.C. Cir. 2012) (internal citations and quotation marks omitted). "[W]e

¹ The Union and Consolidated separately settled their dispute over Weaver's termination, so Consolidated does not seek review of that aspect of the Board's decision.

do not reverse the Board's adoption of an ALJ's credibility determinations unless * * * those determinations are 'hopelessly incredible,' 'self-contradictory,' or 'patently unsupportable.'" *Cadbury Beverages, Inc. v. NLRB*, 160 F.3d 24, 28 (D.C. Cir. 1998) (quoting *Capital Cleaning Contractors, Inc. v. NLRB*, 147 F.3d 999, 1004 (D.C. Cir. 1998)).

Sections 8(a)(3) and (1) of the Act prohibit an employer from interfering with, restraining, coercing, or discriminating against employees in the exercise of their statutory rights to, among other things, join together in collective action and strike. 29 U.S.C. §§ 158(a)(3) & (1). Under the Act, an employer ordinarily must reinstate striking employees at the conclusion of a strike. See *National Conference of Firemen and Oilers, SEIU v. NLRB*, 145 F.3d 380, 384 (D.C. Cir. 1998); *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 378–379 (1967). However, "serious misconduct by strikers is not protected by the Act," and an employer's imposition of "reasonable discipline, including the refusal to reinstate employees for such misconduct, does not constitute an unfair labor practice." *National Conference of Firemen and Oilers*, 145 F.3d at 384.

An employer's discipline of an employee for strike conduct constitutes an unfair labor practice if (i) "the discharged employee was at the time" of the alleged misconduct "engaged in a protected activity," (ii) the employer knew the employee was engaged in a protected activity, (iii) the alleged misconduct during that protected activity provided the basis for discipline, and (iv) the "employee was not, in fact, guilty of that misconduct." *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23 (1964).

Not all misconduct is sufficient to disqualify a striker from the Act's protection, however. See *Allied Indus. Workers, AFL-CIO Local Union No. 289 v. NLRB*, 476 F.2d 868, 879 (D.C. Cir. 1973) (“[N]ot every incident occurring on the picket line, though harmful to a totally innocent employer, justifies refusal to reemploy a picketing employee for acts that exceed the bounds of routine picketing.”) (quoting *Montgomery Ward & Co. v. NLRB*, 374 F.2d 606, 608 (10th Cir. 1967)); *Coronet Casuals*, 207 NLRB 304, 304 (1973) (“[N]ot every impropriety committed in the course of a strike deprives an employee of the protective mantle of the Act.”). Indeed, this court has previously noted that “[c]learly some types of impulsive behavior must have been within the contemplation of Congress when it provided for the right to strike.” *Allied Indus. Workers*, 476 F.2d at 879.

Consequently, “the employees’ right to organize and bargain collectively” must be balanced “against the employer’s right to maintain order and respect and the public’s right to safety.” *Allied Indus. Workers*, 476 F.2d at 879. Striker misconduct justifies an employer’s disciplinary action if, “under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act,” including the right to refrain from striking. *Clear Pine Mouldings*, 268 NLRB 1044, 1046 (1984), *enf’d*, 765 F.2d 148 (9th Cir. 1985), *cert. denied*, 474 U.S. 1105 (1986) (quoting *NLRB v. W.C. McQuaide, Inc.*, 552 F.2d 519, 528 (3d Cir. 1977)). As the Board explained in *Clear Pine Mouldings*,

the existence of a “strike” in which some employees elect to voluntarily withhold their services does not in any way privilege those employees to engage in other than peaceful picketing and persuasion. They have no right, for example, to threaten those

employees who, for whatever reason, have decided to work during the strike, to block access to the employer's premises, and certainly no right to carry or use weapons or other objects of intimidation. As we view the statute, the only activity the statute privileges in this context, other than peaceful patrolling, is the nonthreatening expression of opinion, verbally or through signs and pamphleteering * * *.

268 NLRB at 1047.

"The *Clear Pine* standard is an objective one" and "does not call for an inquiry into whether any particular employee was actually coerced or intimidated." *Mohawk Liqueur Co.*, 300 NLRB 1075, 1075 (1990). Rather, "[a] serious threat may draw its credibility from the surrounding circumstances and not from the physical gestures of the speaker," and an employer need not "countenance conduct that amounts to intimidation and threats of bodily harm." *Clear Pine Mouldings*, 268 NLRB at 1046 (quoting *Associated Grocers of New England v. NLRB*, 562 F.2d 1333, 1336 (1st Cir. 1977), and *W. C. McQuaide, Inc.*, 552 F.2d at 527).

The striker-misconduct standard thus offers misbehaving employees greater protection from disciplinary action than they would enjoy in the normal course of employment. See *Midwest Regional Joint Board v. NLRB*, 564 F.2d 434, 440 (D.C. Cir. 1977) ("Absent a showing of anti-union motivation, an employer may discharge an employee for a good reason, a bad reason or no reason at all without running afoul of the labor laws.").

There is a "burden-shifting element to the *Burnup & Sims* test" for determining whether employer discipline of a striker amounts to an unfair labor practice. *Shamrock Foods Co. v.*

NLRB, 346 F.3d 1130, 1134 (D.C. Cir. 2003). The General Counsel must initially establish that the disciplined employee was a striker and that the employer took action against him or her for conduct associated with the strike. *See In re Detroit Newspaper Agency*, 340 NLRB 1019, 1024 (2003). The burden then shifts to the employer to demonstrate an honest belief that the disciplined employee engaged in misconduct. *See id.*; *Shamrock Foods Co.*, 346 F.3d at 1134. Upon that showing, the burden shifts back to the General Counsel to show that the misconduct did not occur or that it was not serious enough to forfeit the protection of the National Labor Relations Act and to warrant the discipline imposed. *See Shamrock Foods Co.*, 346 F.3d at 1134; *In re Detroit Newspaper Agency*, 340 NLRB at 1024; *Burnup & Sims*, 379 U.S. at 23 n.3. It is the “General Counsel’s obligation to carry the ultimate burden of proving that illegal discrimination has occurred,” and “[t]o the extent that there is a lack of evidence” on either the absence of misconduct or the improper response of the employer, the dispute “must be resolved in favor of the employer.” *Axelson, Inc.*, 285 NLRB 862, 864 (1987); *see also Shamrock Foods Co.*, 346 F.3d at 1135 (The “General Counsel has the burden of showing that the employee did not, in fact, commit the misconduct.”) (internal quotation marks and citation omitted).

III

A. Maxwell

Michael Maxwell is a janitor at Consolidated. On the morning of December 8, 2012, he and several other bargaining-unit employees picketed Consolidated’s Taylorville garage, walking back and forth across the driveway entrance to the parking lot.

That morning, strike-replacement workers Leon Flood and Frank Fetchak left the parking garage in a company van with Flood driving and Fetchak in the passenger seat. As the van approached the exit, Maxwell and others in the picket line blocked the van from leaving. Flood stopped the van briefly and then began inching slowly forward towards the picketers. Maxwell continued to walk back and forth in front of the van between the headlights.

At some point, Maxwell's elbow or forearm made contact with the hood of the van. According to an email and incident reports written by Flood, Maxwell intentionally blocked the path of the van and leaned on the hood. Maxwell, however, testified that the van never stopped, but instead "[a]ll of a sudden took off" and hit him, causing him to bend in towards the van and brace himself against the hood with his arm. J.A. 341. Flood's passenger Fetchak testified that Maxwell "laid on the van," *id.* at 572, or "lean[ed] on the hood" for "less than a minute," *id.* at 575. Maxwell then moved around to the driver's side of the van. Maxwell claimed to have been scrambling to get out of Flood's way, but then the van moved forward and hit him again, pushing him to the driver's side. He gave Flood the middle finger and uttered its associated obscenity. *Id.* at 342; *see also id.* at 29, 574. Maxwell testified that he sustained a "slight yellowish bruise" on his right hip as a result of the incident. *Id.* at 346.

Consolidated informed Maxwell about "reports of [his] harassing, threatening, [and] intimidating behavior towards other [Consolidated] employees," J.A. 30, and suspended him for violating the company's "handbook/workplace violence policy," which prohibits "any acts or threats of violence," *id.* at 22-23. *See also id.* at 30 ("You struck the vehicle, proceeded to the front of the vehicle and leaned on the hood for an extended period of time impeding [Flood's] progress,

and then proceeded around the vehicle to the driver's window and verbally harassed him.").

Adopting the ALJ's factual findings, the Board concluded that Maxwell "did not intentionally strike Leon Flood's vehicle and did not threaten or intimidate Leon Flood." J.A. 12. Instead, the Board determined that Flood hit Maxwell with the van, causing Maxwell to fall forward and brace himself by placing his forearm on the hood. While Maxwell "briefly impeded Flood's progress in leaving the [Taylorville] garage," "he did so no more than the other five picketers" at the scene. *Id.* at 4.

In reaching those findings, the ALJ credited Maxwell's account, rather than Flood's written report (Flood did not testify at the hearing), reasoning that the testimony of Fetchak did not contradict Maxwell "in any material way." J.A. 4 n.5. Consolidated argues that finding was erroneous because Fetchak and Maxwell gave disparate testimony on several key points. For example, Maxwell claimed the van "[t]ook off like a bat out of hell," *id.* at 340, whereas Fetchak testified that Flood was forced to stop the van close to the picket line and to inch slowly forward. Consolidated also notes that Fetchak testified that Maxwell put his arm on the hood and leaned against the van, while Maxwell claimed that the van hit him twice and that he was merely bracing himself.

Those distinctions, however, are not so material as to make the fact findings clearly erroneous. Maxwell's "bat out of hell" comment refers to the vehicle's movement from when Maxwell first saw the van, "coming out of the building," not at the moment when he claims to have been hit. J.A. 340. While Maxwell maintained that the van never stopped, he did concede that the van was "going slower" when it allegedly hit him. *Id.* at 351-352. As for Maxwell's contact with the van,

Fetchak acknowledged that “the reason [Maxwell] leaned his elbow on the van could have been because he was hit by the van on his hip.” *Id.* at 587 (conceding that this “could be an explanation” for the contact).

Importantly, both Fetchak and Maxwell indicated that Maxwell’s encounter with the van was fleeting, not for “an extended period of time,” J.A. 30, as Consolidated alleges. *See id.* at 575 (Fetchak testifying that Maxwell leaned on the hood “15 seconds or so. * * * It was less than a minute.”); *id.* at 343 (Maxwell testifying it was “a minute at the most” from when he first saw Flood to when Flood pulled out of the driveway). There is also no evidence whatsoever that Maxwell ever “struck” the van; in fact, Fetchak’s testimony indicates otherwise. *See id.* at 580 (testifying that he did not see Maxwell raise his arm to strike the van); *id.* at 586 (“[Maxwell] didn’t hit the van. * * * I don’t think he struck it. * * * The definition of strike is making a striking motion, no, I don’t believe he did that.”). Thus, it was not “hopelessly incredible, self-contradictory, or patently unsupportable,” *Cadbury Beverages*, 160 F.3d at 28 (internal quotation marks omitted), for the ALJ to credit Maxwell’s account and find that Flood hit him. *See also E.N. Bisso & Sons, Inc. v. NLRB*, 84 F.3d 1443, 1444–1445 (D.C. Cir. 1996) (“[C]redibility determinations may not be overturned absent the most extraordinary circumstances such as utter disregard for sworn testimony or the acceptance of testimony which is on its fac[e] incredible.”) (quoting *Amalgamated Clothing and Textile Workers Union v. NLRB*, 736 F.2d 1559, 1563 (D.C. Cir. 1984)).

Accepting those fact findings as supported by substantial evidence, the Board did not err in concluding that Maxwell’s actions were not the type of seriously coercive or intimidating behavior that forfeits a worker’s protection under the National

Labor Relations Act. *See, e.g., Consolidated Supply Co., Inc. & Successor Consol. Supply of Madison, Inc.*, 192 NLRB 982, 988–989 (1971) (blocking a company truck “momentarily” is “the sort of trivial, rough incident[] which [is] to be expected during a long, contested strike where an employer attempts to continue operating with nonstrikers”); *Medite of New Mexico, Inc. v. NLRB*, 72 F.3d 780, 791 (10th Cir. 1995) (a “brief incident” in which several picketers gathered around a vehicle, called the driver a “scab,” and struck the car with picket signs, “does not amount to the type of serious conduct that would intimidate nonstriking employees from crossing the picket line and exercising their Section 7 rights”).

By contrast, the cases on which Consolidated relies all involved more extreme or violent contact with and obstruction of non-strikers’ vehicles than Maxwell was found to have engaged in here.²

² *See Siemens Energy & Automation, Inc.*, 328 NLRB 1175, 1176 (1999) (upholding discharge of striker that kicked a car passing through the picket line and threw roofing tacks onto the roadway at a vehicular entrance to the employer’s plant); *GSM, Inc.*, 284 NLRB 174, 174–175 (1987) (“Conduct such as kicking, slapping, and throwing beer cans at moving vehicles is intimidating enough in and of itself,” and constitutes “violent conduct which may reasonably tend to coerce or intimidate employees in the exercise of their rights protected under the Act.”); *Teamsters Local 812 (Pepsi-Cola Newburgh)*, 304 NLRB 111, 115–117 (1991) (“The blocking, hitting and kicking of vehicles by pickets” constituted picket line misconduct, as did a “Family Day” in which striking employees and their families carried out mass picketing, and placed themselves and their small children in front of company trucks as they attempted to leave.); *CalMat Co.*, 326 NLRB 130, 135 (1998) (denying reinstatement for striker who “use[d] himself as a barrier

Because substantial evidence supports the Board's finding that Maxwell did not engage in misconduct justifying suspension, we deny that portion of Consolidated's petition and enforce the Board's order as it applies to Maxwell.

B. Williamson

Eric Williamson, a switchman at Consolidated, was suspended for two separate incidents during the strike. Substantial evidence supported the Board's determination that neither instance of alleged misconduct was severe enough to warrant his suspension.

One evening during the strike, Williamson and other strikers stood along the driveway of the Rutledge Building parking lot waving signs and chanting. At around 5:00 p.m., non-striking employee Dawn Redfern drove her car as part of a slow caravan of vehicles leaving the parking lot. According to Redfern, she was turning right out of the parking lot when she heard a loud smack and immediately stopped her car. Turning her interior light on and rolling down her car window, she noticed that the passenger-side mirror was folded in. Redfern addressed a group of picketers, yelling, "you just hit my car." J.A. 611. Williamson purportedly responded, "No, you hit me." *Id.* at 612. A Huffmaster security guard came over and instructed Redfern to put her window up and keep driving, which she did. Redfern's husband later pushed the mirror back to its normal position. The car was not damaged.

so the driver would have no choice but to stop," and then proceeded to jump up onto the company truck, tear off the door handle, and try to assault the driver and damage the truck as security guards and police officers struggled to restrain him).

Williamson offered a different account of the incident. He acknowledged that he had been standing near Redfern's car as she pulled out, and that he "made sure she [had] seen [his] sign" and "tried to yell 'scab.'" J.A. 443. Williamson claimed that Redfern's passenger-side mirror "grazed [his] whistle on [his] chest," and "flexed in and flexed back." *Id.* Redfern then allegedly "hammered on her brakes[,] rolled her window down" and accused Williamson of breaking her mirror. *Id.* Williamson responded that she had hit him, and then he turned and walked away. He asked a Mattoon Police Department officer at the picket line if the officer had seen what had happened; the officer advised Williamson that he had done nothing wrong. During his testimony, Williamson repeatedly denied striking or pushing the mirror.

Williamson continued to picket at the Rutledge Building the following day. Non-striker Tara Walters testified that, as she arrived for work in the morning, Williamson looked towards her, grabbed his crotch, and "lifted up as a mean, hateful gesture." J.A. 629–630. Williamson denied grabbing his crotch, claiming that he just yelled "scab" at Walters. *Id.* at 440–441.

Consolidated accused Williamson of "threatening and intimidating a female * * * employee by striking her vehicle while * * * standing on the picket line," and of "sexual harassment" in "making inappropriate gestures toward a female * * * employee while she was parking her vehicle," J.A. 40. Williamson was suspended for violations of the "handbook/workplace violence policy" and the "handbook/sexual harassment policy." *Id.* at 31–32.

The Board found no factual basis for Consolidated's conclusion that Williamson intentionally struck Redfern's car mirror. That decision is amply supported by the record—or,

more accurately, the utter lack of any record evidence that Williamson intentionally struck Redfern's mirror as she drove by. Redfern herself conceded that she did not see "who did it," J.A. 619, or have any basis for concluding that Williamson acted with intentionality to damage her mirror. Video footage of the picket line around that time only shows Redfern's car driving by a group of strikers, with no footage of anyone at all coming into contact with the mirror. Accordingly, we uphold the Board's determination that Williamson did not engage in any misconduct with respect to Redfern.

With respect to the Tara Walters incident, the Board discredited Williamson's testimony and found that he did engage in misconduct by grabbing his crotch and making an obscene gesture toward Walters. The Board also held, however, that Williamson's actions were not sufficiently egregious to warrant suspension.

Consolidated argues (Br. 51) that the Board improperly "inferred a legal standard of violence" as necessary to permit discipline. That misreads the decision. The Board, in fact, acknowledged that Williamson's gesture was "totally uncalled for, and very unpleasant," but nonetheless concluded that his actions could not objectively be perceived "as an implied threat" of the kind that would coerce or intimidate a reasonable employee from continuing to report to work during the strike. J.A. 13. Given the rough-and-tumble nature of picket lines and the fleeting nature of Williamson's offensive misconduct, we cannot conclude that the Board erred in its assessment of the objective impact of this particular conduct in this instance. *See Allied Indus. Workers*, 476 F.2d at 879 ("Impulsive behavior on the picket line is to be expected especially when directed against nonstriking employees or strike breakers.") (quoting *Montgomery Ward & Co.*, 374

F.2d at 608); *NMC Finishing v. NLRB*, 101 F.3d 528, 532 (8th Cir. 1996) (noting the “rough and tumble economic activity permitted by the policies established by Congress through the NLRA”).³

C. Hudson

At the time of the strike, Patricia Hudson was an Office Specialist in the fleet department of Consolidated. In one day, she purportedly participated in three back-to-back incidents of driving her car in a manner that obstructed and trapped vehicles in which non-striking workers were driving. Concluding that Hudson had engaged in “harassing, intimidating, threatening and reckless behavior” towards non-strikers with “extremely dangerous vehicular activity on the strike line and on the public roads,” J.A. 52, Consolidated discharged Hudson for violation of the “handbook/workplace violence and/or employee conduct and work rules policies,” *id.* at 41.

The Board ruled that Hudson did not engage in any misconduct that would warrant discharge. The Board was two-thirds correct. Substantial evidence supports its findings

³ The Board ruled in the alternative that, even if Williamson’s conduct had been serious enough to forfeit the protection of the Act, Consolidated failed to meet its “burden” under *Wright Line*, 251 NLRB 1083 (1980), “to establish that it would have suspended Williamson solely on the basis of the Tara Walters incident.” J.A. 13. That is a complete misstatement of the law. The *Wright Line* test applies “when an employer has discharged (or disciplined) an employee for a reason assertedly *unconnected* to protected activity.” *Shamrock Foods*, 346 F.3d at 1135. It has no application to striker misconduct cases. We accordingly do not credit the Board’s alternative ground for its disposition.

that Hudson's conduct toward non-strikers Sarah Greider and Kurt Rankin was not misconduct. But in analyzing the incident involving non-striker Troy Conley, the Board misapplied the governing legal standard.

1. The Greider and Rankin Incidents

On the morning of December 10, 2012, Hudson and Brenda Weaver walked the picket line at the Rutledge Building. At around 10:00 a.m., Hudson and Weaver decided to drive over to corporate headquarters to join the picket line there. Hudson and Weaver drove separately, with Hudson in front and Weaver behind.

Non-striker Sarah Greider left the Rutledge Building parking lot at about that same time. Greider claims that, as she approached the parking lot exit and prepared to turn onto 17th Street, Hudson pulled in front of her and Weaver pulled up behind, blocking her in. Greider testified that Hudson drove slowly and stopped and started several times, while Weaver followed immediately behind so that Greider could not back up. With parked cars and picketers on both sides of the roadway, 17th Street had been reduced to one lane, so Greider could not get around Hudson. After approximately 135–165 feet, Greider turned into the parking lot of an automobile dealership and cut across to a parallel street. Weaver did not follow her.

Greider called the Command Center and reported that Hudson and Weaver had “blocked [her] in.” J.A. 653. She later completed an incident report claiming that Hudson had “refused to move or moved very slowly” in front of her car. *Id.* at 47–49.

Jonell Rich, another non-striker who witnessed the incident, testified that Hudson was in front of Greider going

“very slow, stopping, starting” on 17th Street, “and it stayed that way until [Greider] was able to turn into the [auto dealership] lot.” J.A. 689. Immediately after the incident, Rich texted Greider: “I just saw what Pat Hudson did to you.” *Id.* at 691.

Later that morning, Hudson and Weaver returned to the Rutledge Building, with Hudson driving her car and Weaver in the backseat. Around that time, manager Kurt Rankin drove his car toward an exit of the Rutledge parking lot. Rankin testified that Hudson’s car was parked to the side of the road and surrounded by people, but that as soon as he came up to the exit, “everybody turn[ed] around and got her vehicle moving in front of [him]” by “motioning” her toward the right. J.A. 312–313. A Huffmaster guard held Rankin up as Hudson passed the exit. Rankin then turned right onto 17th Street behind Hudson, who was driving very slowly.

Rankin testified that Hudson “stop[ped] the brakes, move[d], stop[ped] the brakes,” so that he was continually moving very slowly as Hudson “controll[ed] the speed at which [he] could exit and get out of there.” J.A. 320. Hudson testified, however, that she was driving slowly because there were “pickets, cars parked on the side of the road, people crossing the road, [and] people coming in and out of [the auto dealership].” *Id.* at 529. When Rankin tried to speed up and go around Hudson, she allegedly swerved over into the left lane to prevent him from passing. As soon as he got past the vehicles parked along the road, Rankin put his truck into four-wheel drive and went around Hudson on the left by driving through a ditch. Rankin later filled out incident reports about the encounter.

Three non-striking employees—Tara Walters, Jonell Rich, and Bernice Dasenbrock—witnessed the incident,

testifying that Hudson proceeded very slowly in front of Rankin and moved to the left when Rankin tried to pass.

The Board ruled that there was no misconduct by Hudson in either incident. The Board found that on both occasions Hudson's car ended up in front of the non-strikers by coincidence due to the actions of the Huffmaster guard directing traffic leaving the parking lot. The Board also found that Hudson was driving slowly because of activity and congestion on the road, not to harass or annoy Greider or Rankin. Finally, the Board found that Hudson did not repeatedly start and stop in the road in front of Greider and Rankin. In so finding, the Board dismissed the witnesses' testimony as inconsistent or motivated by animus towards Hudson, and relied in part on the fact that neither the non-strikers nor Consolidated reported the incidents to the Mattoon Police Department.

Once again, substantial evidence supports the Board's conclusions. Video footage of the picket line shows Huffmaster personnel directing cars out of the parking lot, and in both incidents, a guard holds up the non-striker's car as Hudson's car drives by on 17th Street. In addition, record evidence supports the Board's finding that Hudson's slow pace was due to all the activity and congestion in the roadway rather than an intentional effort to harass or block Greider and Rankin. For example, Police Chief Jeffrey Branson testified that 17th Street is a "very well traveled road," and that when he first arrived at the Rutledge Building that morning, he "was upset because the road was so congested." J.A. 370–371. Chief Branson also observed "a large crowd in the roadway," *id.* at 372, and noted that cars leaving the facility were "taking care, driving slow, and they were all back to back," going "[t]wo miles an hour" "because the crowd was so close," *id.* at 373–374.

Similarly, Union representative Brad Beisner testified that 17th Street was significantly narrowed during the strike due to picketers parking along both sides of the road, and people getting in and out of their cars to stay warm and dry. Beisner also testified that members of the public and strikers were “driving slowly” on 17th Street during the strike, and that he would go five to ten miles an hour. J.A. 191. Video footage of the area during the strike shows picketers walking up and down the road holding signs and getting close to cars.

The Board also found no credible evidence that Hudson had started and stopped repeatedly in front of Greider and Rankin. Greider made no mention of Hudson stopping and starting in her incident report, and there is no record of her making such a claim to Consolidated managers at the Command Center at the time. The video footage of the Greider Incident, though limited, also does not show any evidence of stopping and starting. Rich’s testimony was inconsistent as to whether and how often Hudson stopped in front of Greider. *Compare* J.A. 689 (testifying that she did not know if Hudson stopped more than once or whether Hudson actually came to a complete stop), *with id.* at 700–702 (testifying that she saw Hudson come to a complete stop in front of Greider twice).

Rankin testified that Hudson would “stop the brakes, move, stop the brakes,” J.A. 320, but only noted Hudson “at some time totally stopp[ing]” in one incident report. Video footage of the incident shows Hudson’s car slowing down after Rankin’s truck turns behind it, and the two vehicles get very close to each other as they drive up 17th Street, but Hudson’s car does not ever fully stop within view of the camera. Other testimony about the incident offered equivocal support at best for Rankin’s version of events. Walters testified that she did not see Hudson start and stop in front of

Rankin, and Rich mentioned the two vehicles coming to a complete stop only when Rankin attempted to go around Hudson at some point.⁴

The Board also found conflicting evidence regarding Rankin's claim that Hudson moved to the left of the road to prevent him from passing. The allegation was not in Rankin's incident reports, and Rankin never told Consolidated prior to Hudson's discharge that she swerved or that he twice tried to pass her. To be sure, Walters and Rich testified that they saw Hudson move to the left in front of Rankin, but the general reliability of their testimony was undermined by noteworthy gaps or inconsistencies. For example, neither Walters nor Rich remembered any vehicles passing Hudson and Rankin going south on the other side of 17th Street—something about which Rankin, Weaver, and Hudson all testified.

When confronted with competing versions of evidence, we defer to the Board's credibility determinations absent the starkest error. *See NLRB v. Augusta Bakery Corp.*, 957 F.2d 1467, 1477 (7th Cir. 1992). We therefore hold that

⁴ Consolidated complains that the Board improperly imposed a duty on the employer to contact the police about these incidents. Such contact, while certainly not dispositive, can be a factor relevant to witness credibility and the seriousness of the misconduct in question. *See, e.g., Precision Window Mfg., Inc. v. NLRB*, 963 F.2d 1105, 1108 (8th Cir. 1992) (threatened employer's call to police was evidence of the threat); *Axelson, Inc.*, 285 NLRB 862, 865 (1987) (the "threatening, intimidating character" of striker's statement was apparent where non-striker felt threatened enough to report the incident to the police). Anyhow, the Board's reliance on that factor was limited in the Greider and Rankin incidents, and substantial evidence would exist even without consideration of that factor.

substantial evidence underlay the Board's determinations that Hudson did not engage in misconduct in the Greider and Rankin incidents.

2. The Conley Incident

Between the Greider and Rankin Incidents, as Hudson and Weaver were en route in separate cars to picket at Consolidated's corporate headquarters, Hudson noticed a company truck on Route 16, a four-lane highway in Mattoon. Manager Troy Conley was driving, and replacement worker Larry Diggs was a passenger. Hudson testified that she decided to follow the truck to see if it was traveling to a commercial worksite where striking employees could set up an ambulatory picket. Weaver followed her. What happened next is strongly disputed.

Conley testified that he was driving east in the right lane on Route 16, when he heard honking and saw Weaver drive up in the left lane beside him with a picket sign in her passenger seat. She went past Conley's truck, signaled and moved into the right lane in front of him. Less than a minute later, Conley saw Hudson drive up in the left lane, pass him, and proceed parallel to Weaver. Conley then "saw some hand motioning going on by Pat [Hudson], and they immediately slowed both cars down." J.A. 537.⁵ Conley did not know

⁵ Hudson and Weaver testified that they had not previously discussed following company vehicles, and were not able to communicate with each other during the drive because Hudson did not have a cell phone. Hudson had decided on her own to follow Conley when she saw him turning onto Route 16. Weaver testified that she followed without initially knowing what Hudson was doing, but eventually noticed the company truck and assumed

how fast any of the cars were traveling, and he conceded that Weaver and Hudson could have been driving the speed limit while in front of him.⁶

Conley testified that he slowed down, signaled, and went into the left lane behind Hudson to see if she would let him pass. She did not. Conley then moved back into the right lane behind Weaver. At some point, three cars came up behind Hudson in the left lane, and she moved in to the right lane ahead of Weaver to allow them to pass her. Conley signaled left and moved into the left lane behind the third car, but again could not pass because Hudson moved back into the left lane, intentionally cutting him off. Conley slowed down and moved back into the right lane behind Weaver.

Conley subsequently turned off of the road, even though it was not the most direct route to the job site, because he “was feeling very harassed” and “was trying to avoid conflict.” J.A. 540. As a result, Conley had to drive a longer route to his destination. Once he reached the job site, Conley called the Command Center to report what had happened, and later filled out an incident report.

Diggs, Conley’s passenger, testified that he saw one car come speeding up beside their truck, stop and look for a moment, and then pull in front of the truck. He testified that a second car then pulled up beside the first car and “both of them slowed down at a fairly fast pace.” J.A. 591. Diggs explained that, “after [other] cars started stacking up behind

Hudson was following it to see if it was going to a commercial worksite.

⁶ The speed limit on Route 16 in that area generally ranges from 45 to 55 mph.

[the truck],” he “saw some motion between the two cars that were in front of us.” *Id.* at 592. The car in the left lane (Hudson) pulled in front of the car in the right lane (Weaver) to let the stacked cars come through. But when Conley attempted to pass, the two cars “pulled back, paralleling each other, and continued to block us from going at the normal speed that we were trying to travel at.” *Id.* Diggs did not know whether Hudson and Weaver were driving at the speed limit and conceded that they could have been, but added that “they were traveling much slower than everyone else was traveling prior to them pulling in front of us.” *Id.* at 597.

Weaver and Hudson had a different recollection from Conley and Diggs. According to Weaver, she had decided to pull up beside the truck to “see who was driving * * *, so that if we followed him to a site where we could picket, we could report it back to the Union.” J.A. 413. She also said that she wanted to find out if the driver was someone with “the credentials to drive the type of truck he[] [was] driving to do the work,” such as a commercial driver’s license, *id.*, although she conceded that she was unaware of any special requirements to drive a pickup truck.⁷ Weaver testified that she was driving at “normal speed—the speed limit,” J.A. 403, and that Hudson did not cut Conley off.

Hudson testified that she had no idea why Weaver passed Conley or “what her intentions were,” but she also passed Conley in order to “stay with Brenda [Weaver].” J.A. 481, 516–518. Hudson denied that she and Weaver paralleled their vehicles in front of Conley to create a rolling blockade or that she ever cut off Conley. Instead, Hudson said she just passed Conley in the left lane and then pulled into the right lane

⁷ Conley testified to driving a four-wheel drive Chevy truck that did not require a commercial driver’s license.

between Weaver and Conley. She also did not recall Conley ever changing lanes or trying to pass.

Hudson and Weaver did not follow Conley after he turned off of the road because they could not turn their cars around at that point in the highway. Hudson and Weaver also testified that, because Conley turned off, they each assumed he was heading to a residential, not a commercial, location, where strikers could not picket.

Consolidated argues that the Conley Incident, which occurred on a public highway approximately three miles away from the picket line, should not have been subject to the striker misconduct standard at all, but instead should have been evaluated as ordinary employee misconduct. Consolidated also argues that, even under the striker misconduct standard, Hudson's behavior was sufficiently serious to forfeit the protection of the National Labor Relations Act. We reject Consolidated's first argument, but conclude that the Board committed reversible legal error in evaluating Hudson's misconduct.

On the question of whether the Conley incident qualified as strike-related behavior, the General Counsel bears the burden of showing that Hudson's conduct occurred "in the course of" the strike. *Shamrock Foods*, 346 F.3d at 1136; *Burnup & Sims*, 379 U.S. at 23. Conduct need not occur at the picket line to be "in the course of protected activity." Confrontations between striking and non-striking employees are typically treated as strike-related conduct even when they occur miles away from the picket line or strike site. *See, e.g., Consolidated Supply Co.*, 192 NLRB at 988-989 (following company truck onto roadway, forcing it to drive slowly, and blocking it); *Axelson*, 285 NLRB at 865 (following non-striker home, cruising slowly past his house, and parking

close enough to see and be seen); *Gibraltar Sprocket Co.*, 241 NLRB 501, 501–502 (1979) (following non-striker’s car); *Otsego Ski-Club-Hidden Valley, Inc.*, 217 NLRB 408, 413 (1975) (same); *Federal Prescription Serv., Inc.*, 203 NLRB 975, 993 (1973) (same).

For example, in *Detroit Newspaper Agency d/b/a Detroit Newspapers v. NLRB*, 342 NLRB 223, 236–237 (2004), a striker had parked in front of a Cracker Barrel Store along with his wife and two young children when he noticed a company van parked nearby. The striker and his family engaged in a confrontation with the driver in which they repeatedly called him a “scab” and slapped the driver’s van. *Id.* at 236. The employer discharged the striker, reasoning that, “because there was no picket line or any strike-related activity going on in the vicinity,” the striker-misconduct analysis should not be applied. *Id.* The Board disagreed, finding that the striker “was on strike at the time of this incident, which involved his attempt to remonstrate with an employee concerning his status as a strike replacement, and that in doing so he was exercising rights protected by the Act.” *Id.* The Board further explained that, to obtain protection under the striker-misconduct standard, “[t]here is no requirement that” the employee “be a part of some kind of formal strike-related activity.” *Id.* The Board also noted “that the [employer] considered [the discharged employee] to be a striker, and that it handled the matter according to the procedures it had set up for reporting, investigating, and taking action on incidents of alleged misconduct by striking employees.” *Id.*

In other words, geography by itself is not dispositive of whether conduct is strike related. The central consideration instead is whether the employee undertakes the conduct for a purpose related to or in furtherance of the strike. *See Burnup*

& *Sims*, 379 U.S. at 23–24. Moreover, Consolidated’s reliance on location is particularly inapt here because the company had facilities in multiple locations and worksites in still more.

Accordingly, Hudson’s conduct falls comfortably within the zone of strike-related activity covered by the National Labor Relations Act. The Conley incident took place when Hudson was traveling between picket sites and was scoping out potential alternative locations for ambulatory pickets. Moreover, Consolidated itself must have understood that strike-related purpose because it treated the Conley Incident as *striker misconduct*, dealing with Hudson through its established procedures for such conduct.⁸

However, we vacate the Board’s determination that Hudson did not engage in misconduct punishable under the Act because the Board’s determination rests on a misapplication of the *Clear Pine Mouldings* standard and the *Burnup & Sims* burden of proof.

The central legal question before the Board was whether Hudson’s driving behavior—on a public highway with vehicles traveling at speeds of 45 to 55 mph, and with uninvolved third-party vehicles in the area—“may reasonably tend to coerce or intimidate” Consolidated employees like Conley and Diggs. *Clear Pine Mouldings*, 268 NLRB at 1046. The burden of proof on that question rests squarely on the General Counsel’s shoulders. The General Counsel must establish either that no misconduct occurred, or that the

⁸ Accordingly, the distinction Consolidated attempts to draw between *following* Conley and being *in front of* Conley on Route 16 is irrelevant, since Hudson was engaged in conduct related to the strike either way.

misconduct was not of sufficient severity to forfeit the law's protection of striker activity. *See Axelson*, 285 NLRB at 864; *Schreiber Mfg.*, 725 F.2d at 416.

The Board misapplied that standard here. The Board decision stressed the "absence of violence." J.A. 12; *see id.* at 9–10. But that asked the wrong question. The legal test to be applied is straightforwardly whether the striker's conduct, taken in context, "reasonably tended to intimidate or coerce any nonstrikers." *Batesville Casket Co.*, 303 NLRB 578, 581 (1991); *see Clear Pine Mouldings*, 268 NLRB at 1045–1046 (expressly rejecting a requirement of violence and instead adopting an "objective test" of "whether the misconduct is such that, *under the circumstances existing*, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act") (emphasis added) (internal quotation marks and citations omitted). While violence or its absence can be relevant factors in that reasonableness analysis, the Board had to take the next analytical step. It had to consider, consistent with precedent, *all* of the relevant circumstances, and evaluate the objective impact on a reasonable non-striker of misconduct committed on a high-speed public roadway with third-party vehicles present. *See, e.g., Oneita Knitting Mills, Inc. v. NLRB*, 375 F.2d 385, 392 (4th Cir. 1967) (strikers who drove their car in front of a non-striker's car, would not permit the non-striker to pass, and shouted obscene remarks and names had engaged in misconduct "which was calculated to intimidate the non-strikers, and which was inherently dangerous in that it involved obstruction of the public highway"); *International Paper Co.*, 309 NLRB 31, 36 (1992) (striker engaged in "hazardous driving designed * * * to intimidate replacement employees and other of Respondent's personnel," including following non-strikers cars "dangerously close" with his truck, driving and weaving alongside them closely, and "after

passing them, driving at a speed designed to assure only a small separation between the two vehicles thus creating a danger of collision”), *enf’d sub nom. Local 14, United Paperworkers Int’l Union v. NLRB*, 4 F.3d 982 (1st Cir. 1993) (Table).

Compounding its error, the Board held that “any ambiguity as to whether [Hudson’s misconduct] was serious enough to forfeit the protection of the Act should be resolved against [Consolidated].” J.A. 13. That improperly shifted the burden of proof from the General Counsel to Consolidated. Because the General Counsel bears the burden of proving that the misconduct is shielded by the Act, any ambiguity or equivocation in the evidence on the question of the conduct’s seriousness “must be resolved in favor of the employer[.]” *Axelson*, 285 NLRB at 864.⁹

Those legal errors in application of the striker misconduct standard require that we grant this portion of Consolidated’s petition for review, vacate the Board’s decision on Hudson’s discharge, and remand for further proceedings.¹⁰

IV

⁹ That the Board had articulated the burden of proof properly earlier in the decision, J.A. 13, is of no help when the law is flatly misstated in the dispositive analysis of a specific argument.

¹⁰ We take the Board at its word that, on remand, it will not “rely on the [ALJ’s] speculation as to what might have motivated Troy Conley’s testimony,” given the total absence of record evidence that could support the ALJ’s findings of bias, anger, or a desire to see Hudson terminated. J.A. 1 n.2.

Consolidated argues lastly that the Board failed to make the necessary findings of fact and provided no legal analysis in determining that Consolidated violated Sections 8(a)(5) and (1) of the Act, 29 U.S.C. §§ 158(a)(5) & (1), in unilaterally eliminating the Office Specialist-Facilities position. That claim has no merit.

It is well-established that an employer commits an unfair labor practice if it makes a unilateral change in a term or condition of employment involving a mandatory subject of bargaining without bargaining to impasse. *See Brewers and Maltsters, Local Union No. 6 v. NLRB*, 414 F.3d 36, 41–42 (D.C. Cir. 2005); *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 198–199 (1991). The elimination of bargaining-unit jobs is a mandatory subject of bargaining within the meaning of Section 8(a)(5) of the Act. *See Finch, Pruyn & Co., Inc.*, 349 NLRB 270, 277 (2007) (“The Board has long held the elimination of unit jobs, albeit for economic reasons, is a matter within the statutory phrase ‘other terms and conditions of employment’ and is a mandatory subject of bargaining[.]”) (citation omitted); *Regal Cinemas, Inc. v. NLRB*, 317 F.3d 300, 310–312 (D.C. Cir. 2003) (company violated Section 8(a)(5) in eliminating bargaining-unit positions and transferring work to managers without first bargaining with union).

Here, the Board specifically found that Consolidated decided in January or February 2014 not to fill Brenda Weaver’s job as the Office Specialist in the Facilities Department, and assigned some of the duties of that position to another position. The Board also found that Consolidated did not provide the Union with advance notice or an opportunity to bargain about its decision to eliminate the position, which reduced the size of the bargaining unit.

Because Consolidated had a duty under settled law to notify and bargain with the Union before reassigning job duties and eliminating the Office Specialist-Facilities position, the Board properly concluded that Consolidated violated Section 8(a)(5). Those essential facts are all that is necessary to find a violation of the duty to bargain. *See Finch, Pruyn & Co.*, 349 NLRB at 277 (“It is undisputed that the [employer] never bargained with [the union] over the elimination of the [unit] position. The [employer]’s unilateral action and failure to fulfill its bargaining obligation is thus plainly established on the record before us.”).

Consolidated argues that the parties stipulated that Weaver’s position of Office Specialist was never “eliminated,” and that Consolidated continues to employ Office Specialists in the bargaining unit. But that misreads the stipulation. It does *not* say that the Office Specialist-Facilities position was preserved. The stipulation instead reiterates that Consolidated planned to abandon filling the position and to transfer Weaver’s duties to other employees.¹¹ That Consolidated continues to employ Office Specialists elsewhere in the company is beside the point. The bargaining unit is still down by one if Weaver’s position is eliminated.

¹¹ *See* J.A. 55 (“February 26, 2013 was the first time the Employer informed the Union of the decision not to fill one of the vacated Office Specialist positions.”); *id.* at 56 (Consolidated later attempted to “discuss/bargain over not filling Weaver’s position” and “offered several options regarding the Office Specialist duties that Weaver previously performed, including 1) paying the Office Specialist who was performing new duties a premium; 2) diffusing the duties even further and sharing with other Office Specialists; or 3) moving the duties to a Company affiliate.”).

Consolidated also contends that it has responded and agreed to the Union's request for bargaining. Perhaps. But that was only *after* Consolidated had already decided to eliminate the Office Specialist-Facilities position. That does not suffice. The bargaining must come before the position is eliminated. *See Brewers and Maltsters*, 414 F.3d at 42 (“[A]n employer's unilateral change in a term or condition of employment *without first bargaining* to impasse violates section 8(a)(5) and (1).”) (emphasis added); *International Ladies' Garment Workers Union v. NLRB*, 463 F.2d 907, 919 (D.C. Cir. 1972) (“[N]o genuine bargaining * * * can be conducted where [the] decision has already been made and implemented.”) (citation omitted) (alterations in original).

V

For the foregoing reasons, we grant Consolidated's petition for review and deny the Board's application for enforcement with respect to Consolidated's discharge of Patricia Hudson. We deny the petition for review and enforce the Board's order in all other respects, and remand for further proceedings on the Hudson discharge consistent with this opinion.

So ordered.

MILLETT, *Circuit Judge*, concurring: As the opinion explains, our deferential standard of review and the record in this case support the conclusion that Eric Williamson's offensive, but fleeting and isolated, obscene gesture did not amount to striker misconduct so egregious that it forfeited the protection of the National Labor Relations Act.

I write separately, though, to convey my substantial concern with the too-often cavalier and enabling approach that the Board's decisions have taken toward the sexually and racially demeaning misconduct of some employees during strikes. Those decisions have repeatedly given refuge to conduct that is not only intolerable by any standard of decency, but also illegal in every other corner of the workplace. The sexually and racially disparaging conduct that Board decisions have winked away encapsulates the very types of demeaning and degrading messages that for too much of our history have trapped women and minorities in a second-class workplace status.

While the law properly understands that rough words and strong feelings can arise in the tense and acrimonious world of workplace strikes, targeting others for sexual or racial degradation is categorically different. Conduct that is designed to humiliate and intimidate another individual *because of and in terms of that person's gender or race* should be unacceptable in the work environment. Full stop.

Yet time and again the Board's decisions have given short shrift to gender-targeted behavior, the message of which is calculated to be sexually derogatory and demeaning. According to Board precedent, such conduct was supposedly not extreme enough to constitute a "threat." For example, in *Calliope Designs*, 297 NLRB 510 (1989), the Board ruled that a striker calling a non-striker a "whore" and a "prostitute,"

and adding that she was “having sex with [the employer’s] president,” was not “serious misconduct” and thus was not sanctionable, *id.* at 521. That same striker repeatedly called a second female employee “a ‘whore’ and told [her] she could earn more money by selling her daughter, another nonstriker, at the flea market.” *Id.* Completely protected, the Board decision said.

Similarly, in *Gloversville Embossing Corp.*, 297 NLRB 182 (1989), the Board’s ruling deemed it acceptable for a striker to yell at female non-strikers to come see “a real man” and then to “pull[] down his pants and expose[] himself,” *id.* at 193–194. And in *Robbins Company*, 233 NLRB 549 (1977), the Board’s order required the reinstatement of a striker who “made crude and obscene remarks and suggestions regarding sex, including an invitation to ‘make some extra money at his apartment that night’” to a female employee, *id.* at 557. *See also Nickell Moulding*, 317 NLRB 826, 828 (1995), *enforcement denied*, *NMC Finishing v. NLRB*, 101 F.3d 528, 532 (8th Cir. 1996) (reinstating striker who targeted a non-striker by carrying on the picket line a homemade sign reading “Who is Rhonda F [with an X through F] Sucking Today?”).

The Board’s rulings have been equally unmoved by racially derogatory and demeaning epithets and behavior. *See, e.g., Airo Die Casting, Inc.*, 347 NLRB 810, 811–812 (2006) (protecting a striker who raised both middle fingers and shouted “fuck you nigger” at an African-American security guard); *Cooper Tire & Rubber Co. and United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union*, 363 NLRB No. 194 (2016) (requiring reinstatement of picketer who called out: “Did you bring enough KFC for everybody?” and “Hey, anybody smell that? I smell fried chicken and

watermelon,” in reference to African-American replacement workers).

Nothing in the Board’s decisions has offered any plausible justification, and I can conceive of none, for concluding that the rights of workers—all workers—are protected by turning picket lines into free zones for sexually or racially abusive and demeaning conduct. Instead, the Board’s rulings dismiss such abhorrent behavior as “unpleasantries” that are just part and parcel of the contentious environment and heated language that ordinarily accompany strike activity. *Gloversville*, 297 NLRB at 194 (“[N]onstriking employees and replacement workers must be prepared to contend with some unpleasantries in a strike situation. * * * [The striker’s] conduct, while censurable, is within the bounds of permissible picket line misconduct[.]”); see also *Airo Die Casting, Inc.*, 347 NLRB at 812 (“[The striker’s] conduct on the picket line, the use of obscene language and gestures and a racial slur, standing alone without any threats or violence, did not rise to the level where he forfeited the protection of the Act.”); *Polynesian Hospitality Tours*, 297 NLRB 228, 252 (1989) (“While one can sympathize with [the female manager] because of the rudeness and vulgarity demonstrated toward her, * * * [none of the activity] ever reached the level that it would * * * even come close to removing an employee from the protection of the Act * * * [since no misconduct] went beyond the use of epithets, vulgar words, profanity, vulgar gestures, and the like.”).

There is no question that Emily Post rules do not apply to a strike. “[S]ome types of impulsive behavior must have been within the contemplation of Congress when it provided for the right to strike.” *Allied Indus. Workers, AFL-CIO Local Union No. 289*, 476 F.2d 868, 879 (D.C. Cir. 1973). Accordingly,

when looking at the “rough and tumble of an economic strike,” *NMC Finishing v. NLRB*, 101 F.3d 528, 531 (8th Cir. 1996), the Board can quite appropriately make allowance for “a trivial rough incident,” *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 293 (1941), and can certainly leave room for the “normal outgrowths of the intense feelings developed on picket lines,” *NLRB v. Wichita Television Corp.*, 277 F.2d 579, 585 (10th Cir. 1960). See also *Old Dominion Branch No. 496, Nat’l Ass’n of Letter Carriers v. Austin*, 418 U.S. 264, 272–273 (1974) (noting that federal labor policies “favor[] uninhibited, robust, and wide-open debate in labor disputes,” and that “freewheeling use of the written and spoken word * * * has been expressly fostered by Congress and approved by the [Board]”); *id.* at 283 (“Federal law gives a union license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point.”).

So giving strikers a pass on zealous expressions of frustration and discontent makes sense. Heated words and insults? Understandable. Rowdy and raucous behavior? Sure, within lawful bounds. But conduct of a sexually or racially demeaning and degrading nature is categorically different. Calling a female co-worker a “whore” or exposing one’s genitals to her is not even remotely a “normal outgrowth[]” of strike-related emotions. In what possible way does propositioning her for sex advance any legitimate strike-related message? And how on earth can calling an African-American worker “nigger” be a tolerated mode of communicating worker grievances?

Such language and behavior have nothing to do with attempted persuasion about the striker’s cause. Nor do they convey any message about workplace injustices suffered,

wrongs inflicted, employer mistreatment, managerial indifference, the causes of employee frustration and anger, or anything at all of relevance about working conditions or worker complaints. Indeed, such behavior is flatly forbidden in every other corner of the workplace because it is dangerously wrong and breathes new life into economically suffocating and dehumanizing discrimination that we have labored for generations to eliminate. Brushing that same behavior off when it occurs during a strike simply legitimates the entirely illegitimate, and it signals that, when push comes to shove, discriminatory and degrading stereotypes can still be a legitimate weapon in economic disputes.

Tellingly (and thankfully), it seems to be an isolated few who undertake such abusive behavior. The overwhelming majority of those involved in strikes are able to effectively communicate their grievances and viewpoints without resort to racial- or gender-based attacks. That just proves that there is no legitimate communicative or organizational role for such misconduct.

And by the way, the Board is supposed to protect the rights of all employees covered by the Act. *See Rights We Protect*, National Labor Relations Board, <https://www.nlrb.gov/rights-we-protect> (last visited Aug. 17, 2016) (“The National Labor Relations Board protects the rights of most private-sector employees to join together, with or without a union, to improve their wages and working conditions.”). Holding that such toxic behavior is a routine part of strikes signals to women and minorities both in the union and out that they are still not truly equals in the workplace or union hall. For when the most important labor/management battles arise and when the economic livelihood of the employer and the employees is on the line, the Board’s decisions say that racial and misogynistic

epithets, degrading behavior, and race- and gender-based vilification are once again fair game.

We have cautioned the Board before against assuming that “the use of abusive language, vulgar expletives, and racial epithets” between employees “is part and parcel of the vigorous exchange that often accompanies labor relations.” *Adtranz ABB Daimler-Benz Transp., N.A., Inc. v. NLRB*, 253 F.3d 19, 24 (D.C. Cir. 2001) (internal quotation marks omitted). It is both “preposterous” and insulting to ensconce into labor law the assumption that “employees are incapable of organizing a union or exercising their other statutory rights under the National Labor Relations Act without resort to abusive or threatening language” targeted at a person’s gender or race. *Id.* at 26; *see also id.* (expressing concern about a Board decision indicating that “it is perfectly acceptable to use the most offensive and derogatory racial or sexual epithets, so long as those using such language are engaged in union organizing or efforts to vindicate protected labor activity”).

In this case, the Board also reasoned that crotch-grabbing must be condoned because it was not a threat to the female employee that Williamson targeted. Maybe not in this instance given the absence of record evidence documenting an adverse effect on Walters. But the problem is that the Board’s decisions seem in too many cases to answer that question from the perpetrator’s perspective, oblivious to the dark history such words and actions have had in the workplace (and elsewhere). *See, e.g., Airo Die Casting, Inc.*, 347 NLRB at 812 (finding testimony from management officials about the reaction of a security guard targeted with a racial slur—“visibly shaken and offended”—to be “somewhat exaggerated” because “anyone examining the actual [video] recording of [the striker’s] activity would be hard pressed to

see any threatening or aggressive conduct”); *Polynesian Hospitality Tours*, 297 NLRB at 252 (“[W]hile * * * one must concede that employees’ conduct was somewhat rude and vulgar, it seems scarcely surprising * * * that some of them became angry at [the manager], referred to her as a ‘bitch,’ and that some of them yelled that she should be fired[.] * * * [T]he actions of the employees in this case [are] valid protests of a supervisor’s illegal actions against them.”); *Cooper Tire & Rubber Co.*, 363 NLRB No. 194 (finding that, “even though [the picketer’s] statements were offensive and racist, and certainly may have been disrespectful to the dignity and feelings of African-American replacement workers, there is no evidence to establish that the statements contained overt or implied threats, that they coerced or intimidated employees in the exercise of their rights protected under the Act, or that they raised a reasonable likelihood of an imminent physical confrontation”).

Nor do the Board’s decisions grapple with the enduring effects in the workplace of such noxious language and behavior. The assumption that such gender- and race-based attacks can be contained to the picket line blinks reality. It will often be quite hard for a woman or minority who has been on the receiving end of a spew of gender or racial epithets—who has seen the darkest thoughts of a co-worker revealed in a deliberately humiliating tirade—to feel truly equal or safe working alongside that employee again. Racism and sexism in the workplace is a poison, the effects of which can continue long after the specific action ends. *Cf. Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986) (“One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional psychological stability of minority group workers[.]”) (quoting *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971), *cert. denied*, 406 U.S. 957 (1972)); *Harris v. Forklift Sys.*,

510 U.S. 17, 22 (1993) (“A discriminatorily abusive work environment, even one that does not seriously affect employees’ psychological well-being, can and often will detract from employees’ job performance, discourage employees from remaining on the job, or keep them from advancing their careers.”).

Accordingly, if the Board’s decisions insist on letting the camel’s nose of racial and gender discrimination into the work environment, the Board should also think long and hard about measuring the “threats” associated with such sexually or racially degrading behavior from the perspective of a reasonable person in the target’s position, and how nigh impossible it is to cabin racism’s and sexism’s pernicious effects. *Cf. Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (Under Title VII, “the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff’s position, considering ‘all the circumstances.’”) (quoting *Harris*, 510 U.S. at 23).

To be sure, employees’ exercise of their statutory rights to oppose employer practices must be vigorously protected, and ample room must be left for powerful and passionate expressions of views in the heated context of a strike. But Board decisions’ repeated forbearance of sexually and racially degrading conduct in service of that admirable goal goes too far. After all, the Board is a component of the same United States Government that has fought for decades to root discrimination out of the workplace. Subjecting co-workers and others to abusive treatment that is targeted to their gender, race, or ethnicity is not and should not be a natural byproduct of contentious labor disputes, and it certainly should not be accepted by an arm of the federal government. It is 2016, and “boys will be boys” should be just as forbidden on the picket line as it is on the assembly line.

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Consolidated Communications d/b/a Illinois Consolidated Telephone Company and Local 702, International Brotherhood of Electrical Workers, AFL-CIO. Cases 14-CA-094626 and 14-CA-101495

October 2, 2018

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND KAPLAN

This case is before us on remand from the United States Court of Appeals for the District of Columbia Circuit. On July 3, 2014, the National Labor Relations Board issued a Decision and Order adopting Administrative Law Judge Arthur J. Amchan's decision finding, in part, that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by discharging Patricia Hudson on December 17, 2012, for her strike-related activity. 360 NLRB 1284 (2014). In reaching that conclusion, the Board adopted the judge's finding that Hudson did not engage in misconduct warranting forfeiture of the Act's protection when driving at highway speed proximate to a company truck occupied by two of the Respondent's managers.¹

The Respondent petitioned the United States Court of Appeals for the District of Columbia Circuit for review. On September 13, 2016, the court denied enforcement of the Board's Order with respect to Hudson's discharge. *Consolidated Communications Inc. d/b/a Illinois Consolidated Telephone Co. v. NLRB*, 837 F.3d 1 (D.C. Cir. 2016). The court rejected the Board's determination that Hudson's conduct did not lose statutory protection, finding that the Board had erroneously focused exclusively on "the absence of violence." The court described the Board's erroneous reasoning as follows:

The central legal question before the Board was whether Hudson's driving behavior—on a public highway with vehicles traveling at speeds of 45 to 55 mph, and with uninvolved third-party vehicles in the area—"may reasonably tend to coerce or intimidate" Consolidated employees like [nonstrikers Troy] Conley and [Lawrence] Diggs. The burden of proof on that question rests squarely on the General Counsel's shoulders. The General Counsel must establish either

that no misconduct occurred, or that the misconduct was not of sufficient severity to forfeit the law's protection of striker activity.

The Board misapplied that standard here. The Board decision stressed the "absence of violence." But that asked the wrong question. The legal test to be applied is straightforwardly whether the striker's conduct, taken in context, "reasonably tended to intimidate or coerce any nonstrikers." While violence or its absence can be relevant factors in that reasonableness analysis, the Board had to take the next analytical step. It had to consider, consistent with precedent, *all* of the relevant circumstances, and evaluate the objective impact on a reasonable non-striker of misconduct committed on a high-speed public roadway with third-party vehicles present.

Id. (emphasis in original) (internal citations omitted).

The court vacated the Board's determination that Hudson's discharge was unlawful and remanded the case for the Board to apply the analysis set forth in *Clear Pine Mouldings*² and to ascertain whether, under "*all* of the relevant circumstances," Hudson's strike-related conduct "reasonably tended to intimidate or coerce any nonstrikers." *Consolidated Communications*, 837 F.3d at 18 (emphasis in original). Consistent with its determination that the General Counsel bears the burden of proof, the court instructed that any ambiguity in the evidence was to be resolved in the Respondent's favor. *Id.* at 19.

On March 10, 2017, the Board notified the parties that it had accepted the remand and invited them to file position statements. The Respondent, the General Counsel, and the Charging Party each filed a position statement.

The Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the record and the position statements—and after properly examining all of the relevant circumstances and placing the burden of proof on the General Counsel, as directed by the District of Columbia Circuit and required by our precedent—we conclude that Hudson's misconduct was of sufficient severity to lose the Act's protection. Accordingly, we will dismiss the complaint allegation relating to her discharge.

Facts

During a December 2012 strike in support of union bargaining demands, striker Hudson, with fellow striker Brenda Weaver in a separate car behind her, spotted a

¹ Specifically, the judge found that "[i]f [Hudson] engaged in misconduct with regard to Conley, by preventing him from passing her, even if this was for 1-1/2 minutes and for 1-1/2 miles, this conduct was not egregious enough to warrant her termination, particularly in light of the fact

that she was a 39-year employee with no prior disciplinary record." *Id.* at 1295. The Board adopted this finding without comment.

² *Clear Pine Mouldings, Inc.*, 268 NLRB 1044 (1984), enf'd. 765 F.2d 148 (9th Cir. 1985), cert. denied 474 U.S. 1105 (1986).

company truck travelling on Route 16 in Mattoon, Illinois. Route 16 is a 4-lane divided highway, two lanes in each direction, where the speed limit ranges from 45 to 55 miles per hour. Hudson, with Weaver joining, decided to follow the company truck to see if it would lead to the location of a commercial worksite where the Union could also picket (an “ambulatory picketing” site, in Board parlance). Driving the company truck was Troy Conley, a manager based in Mattoon. Lawrence Diggs, a manager from Texas, was a passenger in the truck. Both were working in the field to cover for strikers.

Once the strikers caught up to the company truck, Weaver used the left lane to pass both Hudson and the company truck and then returned to the right lane in front of the company truck. Hudson then also passed the company truck on the left, but remained in the left lane, travelling alongside Weaver at approximately the speed limit. By driving side by side, Hudson and Weaver prevented any cars from passing. After cars queued up behind Hudson in the left lane, she moved to the right lane in front of Weaver to allow them to pass. Conley, who recognized the strikers when they passed, began to transition into the left lane in an attempt to follow the other cars that had passed the strikers. At that point, with Conley, Weaver, and Hudson all moving at highway speeds, Hudson returned to the left lane and again began driving next to Weaver, in what could only be an intentional move to block the company truck. After braking, Conley returned to the right lane, where he had no choice but to stay behind Hudson and Weaver for approximately one mile until he was able to exit off of Route 16 in order to take a different, longer way to the worksite.

Discussion

The sole issue to be resolved on remand is whether Hudson, in the course of strike-related activity, engaged in misconduct that lost the Act’s protection.³ Nothing in our statute gives a striking employee the right to maneuver a vehicle at high speed on a public highway in order to impede or block the progress of a vehicle driven by a non-striker, even if the maneuver is executed at or below the speed limit. Indeed, the Board has repeatedly held that the conduct of strikers blocking or impeding nonstrikers in vehicles proceeding (presumably at much lesser speeds) into or out of a company entrance is unprotected or, if attributable to a union, unlawfully coercive. There is no apparent

reason why the result should be different for blocking or impeding nonstrikers on a public highway. In this respect, the court’s remand opinion in this case quoted with approval the Board’s statement in *Clear Pine Mouldings* that “the existence of a ‘strike’ in which some employees elect to voluntarily withhold their services does not in any way privilege those employees to engage in other than peaceful picketing and persuasion. They have no right, for example, to threaten those employees who, for whatever reason, have decided to work during the strike, [or] to block access to the employer’s premises.”⁴

Therefore, even though Hudson’s actions were otherwise protected, the totality of circumstances in this case requires the Board to find that the Act’s protection was lost because of her serious misconduct. Specifically, regarding the “ultimate issue” that governs this case, it is beyond doubt that Hudson’s actions “would reasonably tend to coerce or intimidate employees in the exercise of Section 7 rights, including the right to refrain from striking.”⁵

It is readily apparent that Hudson’s driving would reasonably cause Conley and Diggs to fear for their safety. Two cars, driven at highway speeds by employees participating in a labor dispute with their common employer, passed the company truck and then drove side by side, with Hudson’s car blocking the truck and any other vehicle from properly passing in the left lane. When traffic backed up, Hudson moved over to let other cars pass before deliberately returning to the left lane and blocking Conway’s attempt to pass. By these actions, Hudson sent a clear message to Conley and Diggs that she was intentionally using her vehicle to obstruct or impede their passage. In other words, her actions would not only reasonably be viewed as intimidating, they were *calculated* to intimidate and cannot possibly be excused as some momentary emotional response in the context of a strike’s heightened tensions. Not only was preventing the truck from passing in the wake of other cars dangerous, it would reasonably raise concern about what Hudson might do next. Any employees would reasonably fear that Hudson’s next maneuver could cause a collision that would jeopardize their lives or the lives of other motorists on the highway.

Our finding here is consistent with the Fourth Circuit’s analysis of similar misconduct in *Oneita Knitting Mills, Inc. v. NLRB*, 375 F.2d 385 (4th Cir. 1967), where the

³ The court agreed with the prior Board decision that Hudson was engaged in protected ambulatory strike activity when following the company truck and did not engage in other misconduct of which she had been accused. *Consolidated Communications*, 837 F.3d at 18. Thus, these matters are established as the law of the case. We also do not address the separate issue whether Weaver’s driving behavior went beyond the Act’s protection. In the underlying decision, the Board found that

Weaver’s discharge violated Sec. 8(a)(3) and (1), 360 NLRB at 1296. As the court noted, the Respondent settled the Weaver allegation with the Union. 837 F.3d at 6 fn. 1. In any event, a determination that Weaver did not engage in serious misconduct would not affect our finding that Hudson did.

⁴ 837 F.3d at 8, quoting from 268 NLRB at 1047.

⁵ *Universal Truss, Inc.*, 348 NLRB 733, 735 (2006).

court reasoned that the Respondent could lawfully deny reinstatement to strikers who slowly drove their car in front of a nonstriker in a manner that prevented her from passing because (1) the misconduct “was calculated to intimidate,” and (2) “obstruction of the public highway” was “inherently dangerous.” *Id.* at 392.⁶ Hudson’s conduct was more egregious than that of the Oneita strikers. Like them, she obstructed the public highway with driving that was calculated to intimidate, but she did so at highway speed and with a maneuver that actually cut off the non-strikers from passing in their truck.⁷ Causing nonstrikers to reasonably fear for their safety is all that is necessary to lose protection under *Clear Pine Mouldings*, and the General Counsel failed to prove Hudson did not do so.

Thankfully, Hudson’s maneuvers did not cause an accident. However, it is inherently dangerous to make such moves at highway speeds in the presence of other vehicles and to obstruct or impede their progress. It is also of no consequence that Hudson’s highway-speed maneuvers and obstruction of the company truck was relatively brief, lasting only a minute or so until Conley chose to avoid continued intimidation by turning onto an alternate route to his destination. In the circumstances presented here, a miscalculation by anyone during that minute—though occurring in an instant—could have caused multiple fatalities or serious injuries.⁸

In 2017, more than 40,000 Americans died on our nation’s roadways,⁹ and more than 1,000 automobile fatalities occurred in Illinois alone.¹⁰ We believe the Board must interpret our Act in light of the public safety interests

at stake here. The protected right to strike does not confer immunity on employees who engage in high-speed maneuvering on public highways in a manner that interferes with other vehicles and puts targeted nonstrikers as well as innocent third-party drivers in fear of becoming a fatality statistic.

ORDER

The complaint allegation that the Respondent unlawfully discharged employee Patricia Hudson is dismissed.

Dated, Washington, D.C. October 2, 2018

John F. Ring, Chairman

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting.

Patricia Hudson was a 39-year employee with an unblemished work record when she was fired by her employer for strike-related conduct. Two of the three incidents cited by the employer as lawful grounds for her discharge have now been definitively rejected by the Board and the U.S. Court of Appeals for the District of Columbia Circuit.¹ Left to consider, after the court’s remand of the

⁶ The court discussed this as “the Glisson incident.” It noted that the Oneita strikers involved shouted obscene remarks at the nonstriker driving a car and called her a scab, but in finding the strikers’ conduct unprotected the court relied solely on the fact it “involved obstruction of the public highway.” *Id.*

⁷ It does not matter that Hudson was driving within legal speed limits and that Conley may have sought to exceed those limits in attempting to pass. Sec. 7 does not confer police authority on strikers to enforce traffic laws.

⁸ Cases where the Board has found that employees did not lose the Act’s protection involved much different circumstances than present here. In *Batesville Casket Co.*, 303 NLRB 578 (1991), the judge discredited the manager’s testimony that strikers “boxed in” his company van and instead found that the strikers were merely traveling on the same road, often at a distance from the van, to return to the employer’s facility and “did nothing to impede the progress of the van.” *Id.* at 580. Here, by contrast, Hudson deliberately blocked the company truck with her highway-speed maneuvers. Moreover, simply following nonstrikers at a safe distance, as employees did in *Altorfer Machinery Co.*, 332 NLRB 130 (2000), and *MGM Grand Hotel*, 275 NLRB 1015 (1985), plainly does not have a similar objective tendency to intimidate or coerce non-strikers. *Gibraltar Sprocket Co.*, 241 NLRB 501 (1979)—a case involving strikers following a fast-driving nonstriker and once pulling alongside to motion the nonstriker to pull over—predated the Board’s decision in *Clear Pine Mouldings*, supra, where the Board first adopted the reasonable tendency to coerce or intimidate standard applicable here and

rejected that violence is required to lose protection. As the Board in *Gibraltar Sprocket* was not applying the same standard that we apply here, that decision has no bearing on this case even if it purported to make a finding under all of the circumstances presented there.

There are cases where the Board found more extreme reckless driving unprotected. See *International Paper Co.*, 309 NLRB 31, 36 (1992) (weaving alongside and almost bumping nonstrikers off the road and driving in front in a manner that risked causing a rear-end collision), *enfd. sub nom. Local 14, United Paperworkers International Union v. NLRB*, 4 F.3d 982 (1st Cir. 1993); *Teamsters Local 812 (Pepsi-Cola Newburgh Bottling Co.)*, 304 NLRB 111, 111, 117 (1991) (almost causing an accident by braking in front of a nonstriker); *PRC Recording Co.*, 280 NLRB 615, 663–664 (1986) (braking and zigzagging in front of non-strikers, causing one to swerve into the median). Nothing in this precedent suggests that anything less reckless would not reasonably tend to intimidate or coerce a targeted nonstriker.

⁹ Adrienne Roberts, *U.S. Road-Death Rates Remain Near 10-Year High*, Wall St. J. (Feb. 15, 2018), <https://www.wsj.com/articles/death-rates-on-u-s-roads-remain-near-10-year-high-1518692401>.

¹⁰ Illinois Department of Transportation, *Illinois Fatal Crash Data for 2017: A Snapshot View*, <http://apps.dot.illinois.gov/FatalCrash/Home/CrashData/2017> (last viewed June 7, 2018).

¹ *Consolidated Communications, Inc. v. NLRB*, 837 F.3d 1, 14–15 (D.C. Cir. 2016) (finding substantial evidence supporting the Board’s conclusion that Hudson did not engage in the misconduct alleged).

case, is a highway-driving incident during which Hudson prevented a manager's company truck from breaking the speed limit to pass her, by staying in the left lane for a mile or less and for not more than 1 minute.²

As framed by the court, the "central legal question before the Board [is] whether Hudson's driving behavior—on a public highway with vehicles traveling at speeds of 45 to 55 mph, and with uninvolved third-party vehicles in the area—'may reasonably tend to coerce or intimidate' ... employees" like those in the manager's truck.³ The burden of proof was on the General Counsel to "establish either that no misconduct occurred, or that the misconduct was not of sufficient severity to forfeit the law's protection of striker activity."⁴ Here, the court explained, the issue is whether Hudson's "conduct, taken in context, 'reasonably tended to intimidate or coerce any nonstrikers,'" and the Board must "consider, consistent with precedent, *all* of the relevant circumstances."⁵

Reversing the administrative law judge, the majority now determines that Hudson's conduct was unprotected. But its conclusion is based on a failure to carefully consider all of the record evidence, as the Board is required to do. Instead, the majority focuses narrowly on the fact that the driving incident took place at highway speeds, adopting what approaches a *per se* rule that strike-related conduct on the highway is "inherently dangerous" and so always unprotected. While Hudson's conduct may have annoyed or frustrated managers, it never posed any genuine danger to them, and it had no reasonable tendency to intimidate or coerce them.

I.

Hudson's contested conduct arose during a December 6 to December 13, 2012 strike, which occurred after negotiations for a successor collective-bargaining agreement had stalled. On December 10, Hudson and fellow striker Brenda Weaver⁶ were driving separate cars to the employer's headquarters on Route 16 in Mattoon, Illinois, where they planned to picket. Route 16 runs between Mattoon and Charleston, Illinois, and in certain sections widens to a 4-lane divided road lined by businesses and interspersed with traffic lights.

En route to headquarters, Hudson noticed a company truck traveling east on Route 16, away from the Mattoon

facility. Heeding her union's advice that strikers could conduct ambulatory picketing at the Respondent's commercial worksites, Hudson followed the truck to determine if it was going to a location where the union could picket. Weaver, who could not communicate with Hudson, assumed that Hudson had decided to follow the truck to see where it was going. The company truck, driven by Director of Network Engineering Troy Conley, with passenger Lawrence Diggs (a manager from Texas), was traveling from Mattoon to Charleston to repair a commercial cell tower.

After following Conley for about 1-½ miles, Hudson and Weaver caught up with the company truck, and Weaver passed Hudson and Conley. Without lingering, Weaver signaled, and moved safely into the right lane ahead of Conley. Hudson passed Conley soon thereafter and was momentarily parallel to Weaver's vehicle. There is no evidence that Hudson or Weaver traveled below the speed limit at any time. While Conley and Diggs testified that Hudson and Weaver may have slowed down in front of them, Conley conceded that they could have been traveling at the speed limit and was not sure if he put on his brakes. As posited by the judge, any slowdown may have been the result of reduced speed limits at an approaching stoplight or the fact that Conley, to this point, had been driving considerably *above* the posted speed limit—up to 69 miles per hour in the 45 or 55 mile-per-hour zones.

Hudson next moved into the right lane in front of Weaver to allow cars behind her to pass. Conley began to transition into the left lane to pass Hudson, but before he could do so, Hudson moved back into the left lane. The judge determined that when changing lanes, Hudson did not "cut [Conley] off" or cause him to slam on his brakes. Instead, Conley returned to the right lane and soon exited onto County Road 1200 E to take an alternative route to the jobsite. As the judge determined, in all, Hudson "prevented Conley from passing [her] by staying in the left lane, for a mile or less and not more than 1 minute." Conley did not see Hudson and Weaver after he exited Route 16.

Following these events, Conley called Sam Jurka, the employer's manager of field operations to report the incident. Conley thereafter completed an incident report,

² In the underlying decision (I did not participate), the Board had adopted the judge's finding that the employer unlawfully discharged Hudson for her strike-related conduct, finding that her actions remained protected under the Act. *Consolidated Communications*, 360 NLRB 1284 (2014). On appeal, the court agreed that Hudson's conduct was strike-related activity. 837 F.3d at 17–18, but found that the Board erroneously focused solely on an "absence of violence" when concluding that Hudson's conduct did not lose the Act's protection. *Id.* at 18. The court remanded the case to the Board to instead apply the "all of the circumstances" analysis in *Clear Pine Mouldings, Inc.*, 268 NLRB 1044 (1984),

enfd. 765 F.2d 148 (9th Cir. 1985), cert. denied 474 U.S. 1105 (1986), to determine whether Hudson's conduct lost the protection of the Act. *Id.* at 19.

³ 837 F.3d at 18.

⁴ *Id.*

⁵ *Id.* (emphasis in original).

⁶ The employer also discharged Weaver for her part in these events. In the underlying decision, the Board found that Weaver's discharge violated Sec. 8(a)(3) and (1), 360 NLRB at 1296. The employer settled the Weaver allegation with the union. 837 F.3d at 6 fn. 1.

which the employer presented to Hudson at her termination meeting on December 17.

II.

As the District of Columbia Circuit observed, the Board's seminal decision in *Clear Pine Mouldings*, supra, establishes the legal test to be applied in determining whether an employee has engaged in "serious strike misconduct," i.e., misconduct "such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of the rights protected under the [National Labor Relations] Act."⁷ Although *Clear Pine Mouldings* involved verbal threats,⁸ the Board has applied its test to many kinds of asserted strike misconduct, including conduct involving motor vehicles. The Board's prior decisions in that area, which appropriately turn on their particular facts, do not dictate a result here. Carefully considered in light of precedent, however, the record evidence makes clear that Hudson did not engage in serious strike misconduct.

The Board has found that certain conduct involving motor vehicles did, indeed, amount to serious strike misconduct—but this case is easily distinguishable. In *International Paper Co.*,⁹ for example, a striker lost protection where he tailgated striker replacements dangerously close, weaving his car alongside them, and placing them in danger of being forced off the road or into oncoming traffic. The Board adopted the judge's finding that this driving behavior, which ultimately resulted in a criminal charge for driving to endanger, "exceed[ed] the bounds of peaceful and reasoned conduct" and had a reasonable tendency to coerce and intimidate the strike replacements. 309 NLRB at 36. Here, there is no evidence at all that the managers' truck was in any danger of being forced off the road or into oncoming traffic, and no suggestion that Hudson engaged in anything like criminal behavior.

Nor is this a case where a striker's braking created a dangerous situation for other employees.¹⁰ When Hudson changed into the left lane in front of the managers' truck, she did so with enough space that she did not cut off Conley, cause him to slam on the brakes, or otherwise risk causing an accident. And because Hudson continued at the speed limit when she was in front of Conley, there was

no impediment to the flow of traffic that could have endangered less attentive drivers behind Conley and Hudson. Hudson's driving was potentially frustrating, but it was also fleeting: she prevented Conley from passing for no more than a mile and no longer than a minute. This fact, says the majority, is "of no consequence" because "a miscalculation by anyone during that minute ... could have caused multiple fatalities or serious injuries." There is no actual evidence, however, supporting such dire speculation. Simply put, on this record, there was no even remotely close call here—and certainly nothing that would have reasonably suggested to the managers that Hudson was engaged in reckless or deliberately dangerous driving threatening them with harm, conduct that would have tended to coerce or intimidate them (as opposed to merely annoying them).

Finally, the situation here is unlike that presented in *Oneita Knitting Mills*,¹¹ a Fourth Circuit decision, issued before *Clear Pine Mouldings*, in which the court disagreed with the Board's determination that strikers had *not* lost the Act's protection. There, the Board's trial examiner (today, administrative law judge) explained that the non-striking employee, Glisson, had testified that she drove home for lunch during her 30-minute lunch break and that [two strikers] would pull their car in front of hers and not let her pass, adding, "they just crept along and they would turn around and laugh and call me scab." They also used words which, according to Glisson, a lady would not care to repeat. She did not state which of the two was the driver. There was never any physical contact between the cars and Glisson was unable to state whether other cars were in the area.

Oneita Knitting Mills, Inc., 153 NLRB 51, 62 (1965). Reversing the Board, the Fourth Circuit determined that the two strikers "repeatedly drove their car in front of [the nonstriker's] car and would not permit her to pass, and that [the strikers] shouted obscene remarks and called her a 'scab.'"¹² The court concluded, as a matter of law, "that this misconduct ... was calculated to intimidate the non-strikers and ... was inherently dangerous in that it involved obstruction of the public highway."¹³ Here, in contrast, Hudson did not "repeatedly" drive her car in front of

⁷ 268 NLRB at 1045–1046.

⁸ The *Clear Pine Mouldings* Board rejected what it characterized as the Board's prior "per se rule that words alone can never warrant [loss of statutory protection] ... in the absence of physical acts." *Id.* at 1046.

⁹ 309 NLRB 31, 36 (1992), *enfd.* sub nom. *Local 14, United Paperworkers International Union v. NLRB*, 4 F.3d 982 (1st Cir. 1993). The District of Columbia Circuit here cited *International Paper* as illustrative of "misconduct committed on a high-speed public roadway with third-party vehicles present." 837 F.3d at 18.

¹⁰ See *Teamsters Local 812 (Pepsi-Cola Newburgh Bottling Co.)*, 304 NLRB 111, 117 (1991) (finding that a union violated Sec. 8(b)(1)(A)

when a striker repeatedly braked in front of a non-striker in a manner that almost caused an accident); *PRC Recording Co.*, 280 NLRB 615, 663–664 (1986) (finding serious misconduct where a striker passed two non-striker vehicles and, while in front of them, applied his brakes and zig-zagged, forcing one vehicle to swerve into the median) *enfd.* 836 F.2d 289 (7th Cir. 1987).

¹¹ *Oneita Knitting Mills, Inc. v. NLRB*, 375 F.2d 385 (4th Cir. 1967). The District of Columbia Circuit here cited *Oneita Knitting* as illustrative. 837 F.3d at 18.

¹² *Id.* at 392.

¹³ *Id.*

the managers' truck, and she shouted no obscenities or insults. Nor can she fairly be said to have engaged in "obstruction of the public highway." Unlike the *Oneita Knitting* strikers, Hudson did not "creep along" (in the non-striker's phrase): she drove at the speed limit. The majority insists that Hudson "was intentionally using her vehicle to obstruct or impede [the managers'] passage"—but this would be meaningfully true only if the managers had some legitimate need to exceed the speed limit.

Against the weight of the record evidence, then, the majority insists that Hudson's driving was "calculated to intimidate"—a baseless conclusion that the administrative law judge, who saw and heard the witnesses in this case, most certainly did not draw. Rather, this case fits comfortably with prior Board decisions finding that striker conduct involving motor vehicles did *not* lose the Act's protection.¹⁴ Had Hudson cut off the managers' truck, had she persisted in driving in front of them for longer than she did, had she violated traffic laws, had her driving been accompanied by threatening words or gestures, had road conditions been hazardous, had she had prior hostile encounters with the managers—add some or all of these circumstances, and this would be a different, more difficult case. But these factors are missing from the record, and citing alarming statistics about roadways death (as the

majority does) is no proper substitute for analyzing the evidence with care, as we are required to do.

In *Clear Pine Mouldings*, the Board rejected an earlier per se rule that strikers' verbal threats could never be serious strike misconduct. In this case, the District of Columbia Circuit similarly rejected the Board's original suggestion that the absence of "violence" was the single dispositive factor here. Now, ironically, the majority seemingly makes the same sort of error—focusing on the "inherent danger" of highway driving to the practical exclusion of the other circumstances present.

Hudson's driving incident may not have been admirable, or even advisable, but considering "all the circumstances"—as the Court of Appeals has instructed us to do—the General Counsel proved that it was not misconduct severe enough to cost Hudson the protection of the Act and so her job. Because substantial evidence simply does not support the majority's contrary conclusion, I dissent.

Dated, Washington, D.C. October 2, 2018

Lauren McFerran,

Member

NATIONAL LABOR RELATIONS BOARD

¹⁴ For example, in *Batesville Casket Co.*, 303 NLRB 578, 580–581 (1991), the Board adopted the judge's finding that a striker did not engage in serious misconduct when he pulled up alongside a company van at a stop light, deliberately pulled in front of it, and continued in this position for a short distance until the van detoured to avoid him. Acknowledging that vehicles might be used in some situations by strikers to intimidate non-strikers, the judge looked to the context in which the incident occurred and found that the incident was very short in duration, the striker did not impede the progress of the van, and there was no evidence that he or other strikers operated their vehicles "in any reckless, unsafe, or threatening manner so as to conclude that their actions reasonably tended to intimidate or coerce any nonstrikers." *Id.* at 581, citing *MGM Grand Hotel*, 275 NLRB 1015 (1985).

Similarly, the Board found that strikers did not lose the protection of the Act where, in the course of strike activity, they followed another driver, see *Altorfer Machinery Co.*, 332 NLRB 130, 142–143 (2000), or pulled up alongside a car at a high rate of speed and motioned for the nonstriker to pull over, *Gibraltar Sprocket Co.*, 241 NLRB 501, 502 (1979). *Gibraltar Sprocket* pre-dates *Clear Pine Mouldings*, but the Board applied a standard that aligns closely with the present standard—explaining that "each incident of alleged misconduct must be assessed in light of the surrounding circumstances, including the severity and frequency of the involved employee's actions," 241 NLRB at 501–502—and so the case remains instructive.

Jt 9a

A



9b

B



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CONSOLIDATED COMMUNICATIONS D/B/A
ILLINOIS CONSOLIDATED TELEPHONE
COMPANY

and

Cases 14-CA-094626,
and 14-CA-101495

LOCAL 702, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED that Cases 14-CA-094626 and 14-CA-101495, which are based on charges filed by Local 702, International Brotherhood of Electrical Workers, AFL-CIO (Union), against Consolidated Communications d/b/a Illinois Consolidated Telephone Company (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:



1

A. The charge in Case 14-CA-094626 was filed by the Union on December 11, 2012, and a copy was served by regular mail on Respondent on the same date.

B. The amended charge in Case 14-CA-094626 was filed by the Union on December 17, 2012, and a copy was served by regular mail on Respondent on December 18, 2012.

C. The charge in Case 14-CA-101495 was filed by the Union on March 28, 2013, and a copy was served by regular mail on Respondent on March 29, 2013.

2

A. At all material times, Respondent, an Illinois corporation, with offices and places of business located throughout the central and southern portions of the State of Illinois, including a retail store, a building on Commercial Avenue, a corporate office, a central office, and a warehouse distribution facility in Mattoon, Illinois, has been a provider of telephone and communications services.

B. During the 12-month period ending April 30, 2013, Respondent, in conducting its business operations described above in paragraph 2A, derived gross revenues in excess of \$250,000.

C. During the 12-month period ending April 30, 2013, Respondent, in conducting its business operations described above in paragraph 2A, purchased and received at its Illinois facilities goods valued in excess of \$50,000 directly from points outside the State of Illinois.

D. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Steve Shirar	- Vice-President
Ryan Whitlock	- Director, Employee and Labor Relations
Gary Patrem	- Director, Fleet, Facilities and Supply Chain
Michael E. Croy	- Senior Manager, Fleet, Facilities and Supply Chain
Troy Conley	- Senior Manager, Engineering
Don Traub	- Senior Manager, Network Operations
Anna Bright	- Manager, Human Resources
Sam Jurka	- Sr Manager, Illinois Operations
Kurt Rankin	- Director, Network Operations
Larry Diggs	- Supervisor
Leon Flood	- Supervisor
Celeste Webb	- Supervisor

Starr Morgan - Supervisor
Frank Fetchak - Supervisor
Kevin Swan - Central Office Manager

5

A. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent, EXCLUDING confidential secretaries, professional employees, guards and supervisors as defined in the Act.

B. Since about 1960, and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 28, 2013 through November 14, 2016.

C. At all times since about 1960, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6

From about December 6, 2012 through December 11, 2012, certain Unit employees ceased work concertedly and engaged in a strike.

7

A. On December 13, 2012, Respondent suspended Unit employees Michael L. Maxwell and Eric L. Williamson for two days.

B. On December 13, 2012, Respondent indefinitely suspended Unit employees Patricia A. Hudson and Brenda Weaver.

C. On December 17, 2012, Respondent discharged Unit employees Patricia A. Hudson and Brenda Weaver.

D. On about December 18, 2012, a more precise date unknown to the undersigned, Respondent reassigned the job duties of the Unit position of Office Specialist - Facilities Department, formerly held by Unit employee Brenda Weaver, and eliminated the Office Specialist - Facilities Department position from the Unit.

E. Respondent engaged in the conduct described above in paragraphs 7A, 7B, 7C, and 7D because the named employees engaged in the strike described above in paragraph 6 and to discourage employees from engaging in this activity and other concerted activity.

F. Respondent engaged in the conduct described above in paragraphs 7A, 7B, 7C, and 7D because the named employees joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

8

Respondent engaged in the conduct described above in paragraph 7D because Brenda Weaver was named in a charge and cooperated in a Board investigation in Case 14-CA-094626.

9

A. The subjects set forth above in paragraph 7D relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

B. Respondent engaged in the conduct described above in paragraph 7D without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

10

By the conduct described above in paragraph 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act

11

By the conduct described above in paragraph 7, Respondent has been discriminating in regard to hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

12

By the conduct described above in paragraphs 7D and 8, Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

13

By the conduct described above in paragraphs 7D and 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 7D and 9, the Acting General Counsel seeks an order requiring Respondent to restore to the Unit the duties and the position of Office Specialist - Facilities Department, as it existed on December 5, 2012.

As part of the remedy for the unfair labor practices alleged above in paragraphs 7, 8, and 9, the Acting General Counsel seeks an Order requiring that the Notice be read to employees during working time by Respondent.

As part of the remedy for the unfair labor practices alleged above in paragraph 7, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

As part of the remedy for the unfair labor practices alleged above in paragraph 7, the Acting General Counsel seeks that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer

must be received by this office on or before June 13, 2013, or postmarked on or before June 12, 2013. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed

by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on **August 19, 2013, 9 a.m.**, or as soon thereafter as you may be heard, and on consecutive days thereafter until concluded, a hearing will be conducted at **Lake Land College, Workforce Development Center Building, Room 105, 305 Richmond Avenue East, Mattoon, Illinois 61938**, before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at St. Louis, Missouri, this 30th day of May 2013.



Daniel L. Hubbel, Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
Saint Louis, MO 63103-2829

Attachments

December 6, 2012

VIA Hand-Delivery

To: Ryan Whitlock

Re: ULP Strike

To Whom It may Concern: Ryan Whitlock, Steve Shirar,

This letter is to notify you that commencing on December 6th at 10:00pm, Local 702 is calling an unfair labor practice strike of bargaining unit employees against ICTC. Local 702 is protesting the Company's unfair labor practices, including but not limited to its failure to provide information relevant to health care, conditioning further bargaining on the Union making a proposal that includes the Company's proposed 4% cash balance plan, and other acts and conduct that constitute bad faith bargaining.

I want to assure you that Local 702 and its members will provide assistance if requested by management so as to leave work in an orderly and safe manner. At all times, Local 702 and its members will conduct themselves peacefully and in compliance with applicable laws. We expect the Employer to respect the protected rights of the bargaining unit employees to engage in an unfair labor practice strike. We demand that the Employer cease and desist from its unlawful bargaining tactics.

The Local 702 stands willing to meet and engage in meaningful bargaining over all open items. We plan on being ready to meet on Monday, December 10th at 9:00am.

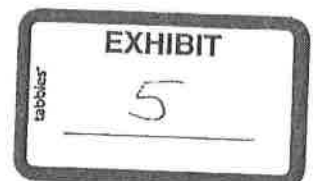
Steve Hughart

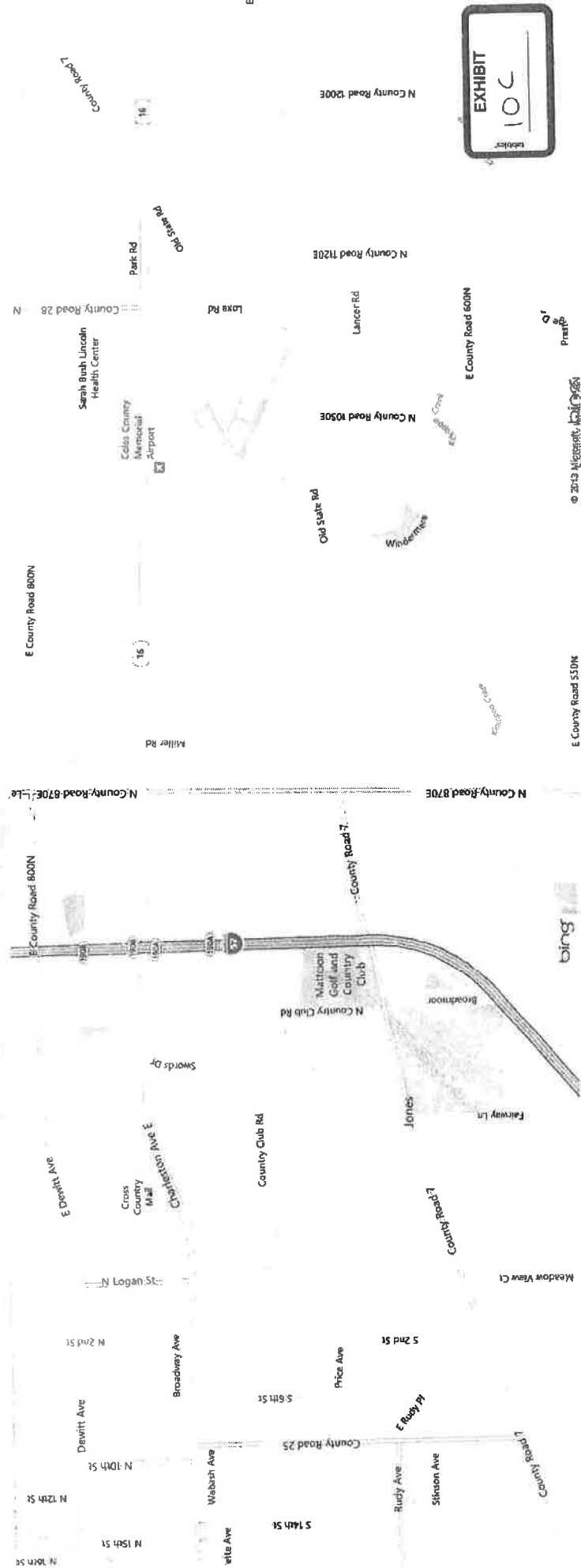
Steve Hughart
Business Manager,

Local 702

@ 10:00 P.M.

12-6-12





TO: Pat Hudson

FROM: Gary Patrem

SUBJECT: Termination

FOR: Personnel File

DATE: December 17, 2012

Due to your actions in violation of the Company handbook/workplace violence and/or employee conduct and work rules policies on December 10th, we are terminating your employment effective immediately.

Refused to Sign

Employee Signature

12/17/12

Date

Gary Patrem

Company Representative Signature

12/17/2012

Date

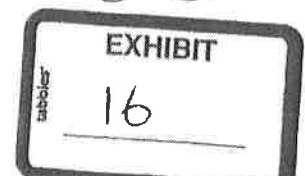
Anna Paisie (HRC) 12/17/12

Union Refused to Sign



Workplace Violence

Consolidated Communications Inc. prohibits any acts or threats of violence by any Consolidated Communications Inc. employee or former employee against any other employee in or about the Company's facilities, properties, or elsewhere at any time. Any acts or threats of violence against Consolidated Communications, Inc. employees, customers, or visitors while on the company's premises or while they are engaged in business with or on behalf of Consolidated Communications Inc., on or off the company's premises, is not permitted. Any violation of this statement will result in disciplinary action, up to and including termination. Violations may also warrant the contacting of local law enforcement authorities.



Employee Conduct and Work Rules

To assure orderly operations and provide the best possible work environment, CCI expects employees to follow rules of conduct that will protect the interests and safety of all employees and CCI. It is not possible to list all the forms of behavior that are considered unacceptable in the workplace, but the following are examples of infractions of rules of conduct that may result in disciplinary action, including legal recourse, suspension, or termination of employment.

- Theft or inappropriate removal or possession of CCI property, records, or other material
- Falsifying any reports or records, including personnel, absence, sickness, injury or timekeeping records
- Unauthorized or illegal possession, use or sale of alcohol or controlled substances on work premises, during working hours, while engaged in Company activities or in Company vehicles
- Fighting or threatening behavior in the workplace
- Boisterous or disruptive activity in the workplace; horseplay
- Negligence or improper conduct leading to damage of CCI or customer property, tools or equipment
- Insubordination or refusing to perform work, as assigned
- Violation of safety rules or practices or engaging in any conduct which tends to create a safety hazard
- Sexual, ethnic, racial, religious, or other company forbidden/unlawful discrimination, harassment or disrespect toward fellow employees, visitors or other members of the public
- Possession, use or sale of weapons, firearms (concealed or unconcealed) or explosives in the workplace or on customer premises
- Excessive tardiness or absenteeism, or any absence without notice
- Unauthorized use of telephones, mail system, or other CCI equipment
- Unauthorized disclosure of business "secrets" or confidential information
- Violation of personnel policies
- Unsatisfactory performance or conduct
- **Unlawful or improper conduct off Company premises or during non-working hours which affect the employee's relationship to his job, his fellow employees, his supervisors, or to the Company's products, property, reputation, or goodwill in the community**
- Willful misrepresentation or fraudulent claim on any Company account

These examples are not all inclusive. We emphasize that termination decisions will be based on an assessment of all relevant factors. Disciplinary action may include a verbal warning, written warning, suspension and termination. The appropriate disciplinary action imposed will be determined by the Company. The Company does not guarantee that one form of action will necessarily precede another. Nothing in this policy is designed to modify our employment-at-will policy.

Consolidated Communications employees or authorized agents shall conduct communications with competitors and competitors' end-user customers with the same degree of professionalism, courtesy, and efficiency as that performed on behalf of CCI with our end-user customers.

HUFFMASTER INCIDENT REPORT

ALL INFORMATION MUST BE CLEARLY PRINTED

INCIDENT #

0006

Office Use Only

CLIENT: _____ SITE/LOCATION: _____

Date of Incident: 12-16-12 Time of Incident: 11:35 AM 11:45 AM PAGE 1 OF 2

Type of Incident: ☒ Blocking, ☐ Flat Tires, ☐ Vandalism, ☐ Assault, ☐ Throwing Objects
 Windshield/Window Smashed, ☐ Trespassing, ☒ Harassment, ☐ Arson, ☐ Following Vehicle,
 Vehicle Accident, Other _____

Injuries: ☐ Yes, ☒ No,Hospitalized: ☐ Yes, ☒ No,

Who? _____

Where? _____

Police Notified: ☐ Yes, ☒ No, Department: _____

Officers Name(s): _____ Badge #(s): _____

Report #: _____ Approximate Arrival Time: _____

Arrest Made: ☐ Yes, ☒ No, Name of Arrested: _____

Items Used: ☐ Brick/Rock/Stone, ☐ Marbles/Ball Bearings, ☐ Jack Rock, ☐ Nails/Screws,
☐ Club/Stick, ☐ Picket Sign, ☐ Knife, ☐ Firearm, ☐ Flammable Fluid, ☐ Other _____

If there are witnesses to this incident, you must attach completed witness statements to this report.

Witnesses: ☐ Yes, ☒ No, Names: _____☐ Huffmaster, ☐ AWF, ☐ Subcontractor, ☐ Client Emp., ☐ Other _____Witness statement(s): ☐ Yes, ☒ No

Additional witnesses or suspects should be listed on back of page.

Suspect # 1: Pat Hineson

Name if Known

☐ W/M, ☐ B/M, ☐ H/M, ☐ A/M, ☐ Other☒ W/F, ☐ B/F, ☐ H/F, ☐ A/F, ☐ OtherAge: 45 Height: 5' 9" Weight: 150Hair: Brown Eyes: _____

Clothing: _____

Distinguishing Marks: _____

Suspect #2: Broda Wenzel

Name if Known

☐ W/M, ☐ B/M, ☐ H/M, ☐ A/M, ☐ Other☒ W/F, ☐ B/F, ☐ H/F, ☐ A/F, ☐ OtherAge: 40 Height: 5' 10" Weight: 160Hair: Brown Eyes: _____

Clothing: _____

Distinguishing Marks: _____

W=White B=Black H=Hispanic A=Asian

Complete form on reverse side.

Vehicle #1: <input checked="" type="checkbox"/> Suspect Vehicle <input type="checkbox"/> Client Vehicle <input type="checkbox"/> Damaged Vehicle, <input type="checkbox"/> Accident Year: _____ Make: _____ Model: _____ <input type="checkbox"/> 2 dr. <input type="checkbox"/> 4 dr. Color: <u>Light Brown</u> <input checked="" type="checkbox"/> Light <input type="checkbox"/> Med. <input type="checkbox"/> Dark License Plate: <u>HUOSR 73</u> State: <u>IL</u> Plate Color: <u>White</u> Number of Occupants: <u>4</u> Type of Damage: <u>Vehicle Damage, Two People Blocking</u>	Vehicle #2: <input type="checkbox"/> Suspect Vehicle <input type="checkbox"/> Client Vehicle <input type="checkbox"/> Damaged Vehicle, <input type="checkbox"/> Accident Year: _____ Make: _____ Model: _____ <input type="checkbox"/> 2 dr. <input type="checkbox"/> 4 dr. Color: _____ <input type="checkbox"/> Light <input type="checkbox"/> Med. <input type="checkbox"/> Dark License Plate: _____ State: _____ Plate Color: _____ Number of Occupants: _____ Type of Damage: _____
---	---

Evidence: ☐ Yes, ☒ No Given to: _____
 Description: _____

Video Tape: ☐ Yes, ☒ No, ☐ Actual Incident, ☐ Damage, ☐ Interview, ☐ Suspect Vehicle
☐ I.D. Shots, ☐ Evidence, ☐ Other: _____ Video taken by: _____

5 mm Film: ☐ Yes, ☒ No, ☐ Actual Incident, ☐ Damage, ☐ Suspects, ☐ Suspect Vehicle
☐ I. D. Shots, ☐ Evidence, ☐ Other: _____ Photos taken by: _____

Describe in detail the incident as you know it happened: When pulling out of company parking lot a vehicle pulled in front of my vehicle and a vehicle was behind me blocking me in a one lane path unable to pull forward or backward. The vehicle proceeded to grow very very slow and at some times turning around while others continued to yell, scream and whistle. I was unable to pass the vehicle in order to get out of the compromising situation. I was in my position, very vulnerable and trapped. It was only when there were no vehicles on the sides of the roadway that I was able to pass the vehicle.

If necessary, additional information should be attached to this sheet.

<u>X</u> <u>Kurtis W. Rankin</u> Signature of Report Writer	<u>X</u> <u>12-12-12</u> Today's Date	<u>Phillip P. Dombrowski</u> <u>[Signature]</u> Supervisors Signature/Date
<u>X</u> <u>Kurtis W. Rankin</u> Printed Name of Report Writer	<u>X</u> <u>12-10-12</u> Your Title or Emp. #	

Sarah Grier

HUFFMASTER INCIDENT REPORT

ALL INFORMATION MUST BE CLEARLY PRINTED

INCIDENT #

0004

Office Use Only

CLIENT: CC1 SITE/LOCATION: Rutledge

Date of Incident: 12/10 Time of Incident: 10:00 AM PAGE 1 OF 1

Type of Incident: ☒ Blocking, ☐ Flat Tires, ☐ Vandalism, ☐ Assault, ☐ Throwing Objects
 Windshield/Window Smashed, ☐ Trespassing, ☒ Harassment, ☐ Arson, ☐ Following Vehicle,
 Vehicle Accident, Other _____

Injuries: ☐ Yes, ☒ No,Hospitalized: ☐ Yes, ☒ No,

Who? _____

Where? _____

Police Notified: ☐ Yes, ☒ No, Department: _____

Officers Name(s): _____ Badge #(s): _____

Report #: _____ Approximate Arrival Time: _____

Arrest Made: ☐ Yes, ☐ No, Name of Arrested: _____

Items Used: ☐ Brick/Rock/Stone, ☐ Marbles/Ball Bearings, ☐ Jack Rock, ☐ Nails/Screws,
☐ Club/Stick, ☐ Picket Sign, ☐ Knife, ☐ Firearm, ☐ Flammable Fluid, ☐ Other _____

If there are witnesses to this incident, you must attach completed witness statements to this report.

Witnesses: ☒ Yes, ☐ No, Names: Jonell Rich☒ Huffmaster, ☐ AWF, ☐ Subcontractor, ☐ Client Emp., ☐ Other _____Witness statement(s): ☐ Yes, ☐ No

Additional witnesses or suspects should be listed on back of page.

Suspect # 1: Pat Hudson

Name if Known

☐ W/M, ☐ B/M, ☐ H/M, ☐ A/M, ☐ Other☒ W/F, ☐ B/F, ☐ H/F, ☐ A/F, ☐ Other

Age: _____ Height: _____ Weight: _____

Hair: _____ Eyes: _____

Clothing: _____

Distinguishing Marks: _____

Suspect #2: Brenda Wleaner

Name if Known

☐ W/M, ☐ B/M, ☐ H/M, ☐ A/M, ☐ Other☒ W/F, ☐ B/F, ☐ H/F, ☐ A/F, ☐ Other

Age: _____ Height: _____ Weight: _____

Hair: _____ Eyes: _____

Clothing: _____

Distinguishing Marks: _____

W=White B=Black H=Hispanic A=Asian

Complete form on reverse side.

Vehicle #1: <input checked="" type="checkbox"/> Suspect Vehicle <input type="checkbox"/> Client Vehicle	Vehicle #2: <input checked="" type="checkbox"/> Suspect Vehicle <input type="checkbox"/> Client Vehicle
<input type="checkbox"/> Damaged Vehicle, <input type="checkbox"/> Accident	<input type="checkbox"/> Damaged Vehicle, <input type="checkbox"/> Accident
Year: _____ Make: <u>Hudson</u> ^{Grand} _{prix}	Year: _____ Make: <u>PT Cruiser type car</u>
Model: _____ <input type="checkbox"/> 2 dr. <input checked="" type="checkbox"/> 4 dr.	Model: _____ <input type="checkbox"/> 2 dr. <input checked="" type="checkbox"/> 4 dr.
Color: <u>Light tan</u> <input type="checkbox"/> Light <input type="checkbox"/> Med. <input type="checkbox"/> Dark	Color: <u>blue/grey</u> <input type="checkbox"/> Light <input type="checkbox"/> Med. <input type="checkbox"/> Dark
License Plate: <u>Hudson xxx</u>	License Plate: <u>Weaver xxx</u>
State: <u>IL</u> Plate Color: _____	State: <u>IL</u> Plate Color: _____
Number of Occupants: <u>1</u>	Number of Occupants: <u>1</u>
Type of Damage: _____	Type of Damage: _____

Evidence: ☐ Yes, ☒ No Given to: _____

Description: _____

Video Tape: ☐ Yes, ☐ No, ☐ Actual Incident, ☐ Damage, ☐ Interview, ☐ Suspect Vehicle

☐ I.D. Shots, ☐ Evidence, ☐ Other: _____ Video taken by: _____

35 mm Film: ☐ Yes, ☐ No, ☐ Actual Incident, ☐ Damage, ☐ Suspects, ☐ Suspect Vehicle

☐ I. D. Shots, ☐ Evidence, ☐ Other: _____ Photos taken by: _____

Describe in detail the incident as you know it happened: Left Command Center
Upheld out for an appt. in Champaign. I exited
through the picket line and Pat Hudson pulled in
front of my car and then Brenda Weaver pulled
behind my car. Pat refused to move or moved very slowly.
finally I was able to pull away from the block by
turning into the car dealership parking lot on the
left and made it through their parking lot to Lake Land
Blvd. I continued on Lake Land Blvd. through town and

If necessary, additional information should be attached to this sheet.

x <u>Sarah Greider</u>	x <u>12/12/12</u>	x <u>[Signature]</u>
Signature of Report Writer	Today's Date	
x <u>Sarah Greider</u>	x <u>206745</u>	
Printed Name of Report Writer	Your Title or Emp. #	Supervisors Signature/Date

They passed me on Charleston Ave
Miss County Mall. I got on the Interstate North
and they continued on Rt 16.

HUFFMASTER INCIDENT REPORT

ALL INFORMATION MUST BE CLEARLY PRINTED

INCIDENT #

0003

Office Use Only

CLIENT: CC1 SITE/LOCATION: MATCOX 14

7:30 AM

Date of Incident: 12-10-12 Time of Incident: 9:30a PAGE ____ OF ____

Type of Incident: ☒ Blocking, ☐ Flat Tires, ☐ Vandalism, ☐ Assault, ☐ Throwing Objects
 Windshield/Window Smashed, ☐ Trespassing, ☐ Harassment, ☐ Arson, ☐ Following Vehicle,
 Vehicle Accident, Other _____

Injuries: ☐ Yes, ☒ No,Hospitalized: ☐ Yes, ☒ No,

Who? _____

Where? _____

Police Notified: ☐ Yes, ☒ No, Department: _____

Officers Name(s): _____ Badge #(s): _____

Report #: _____ Approximate Arrival Time: _____

Arrest Made: ☐ Yes, ☐ No, Name of Arrested: _____

Items Used: ☐ Brick/Rock/Stone, ☐ Marbles/Ball Bearings, ☐ Jack Rock, ☐ Nails/Screws,
☐ Club/Stick, ☐ Picket Sign, ☐ Knife, ☐ Firearm, ☐ Flammable Fluid, ☐ Other _____

If there are witnesses to this incident, you must attach completed witness statements to this report.

Witnesses: ☒ Yes, ☐ No, Names: LARRY DIGGS☐ Huffmaster, ☐ AWF, ☐ Subcontractor, ☐ Client Emp., ☐ Other _____Witness statement(s): ☐ Yes, ☐ No

Additional witnesses or suspects should be listed on back of page.

Suspect # 1: PAT HUDSON

Name if Known

☐ W/M, ☐ B/M, ☐ H/M, ☐ A/M, ☐ Other☒ W/F, ☐ B/F, ☐ H/F, ☐ A/F, ☐ Other

Age: _____ Height: _____ Weight: _____

Hair: _____ Eyes: _____

Clothing: _____

Distinguishing Marks: _____

Suspect #2: _____

Name if Known

☒ W/M, ☐ B/M, ☐ H/M, ☐ A/M, ☐ Other☐ W/F, ☐ B/F, ☐ H/F, ☐ A/F, ☐ Other

Age: _____ Height: _____ Weight: _____

Hair: _____ Eyes: _____

Clothing: _____

Distinguishing Marks: GREY CAR PLATE

WEAVE 9

W=White B=Black H=Hispanic A=Asian

Complete form on reverse side.

Vehicle #1: ☒ Suspect Vehicle ☐ Client Vehicle☐ Damaged Vehicle, ☐ AccidentYear: _____ Make: CHEVYModel: _____ ☐ 2 dr. ☐ 4 dr.Color: GRAY ☐ Light ☐ Med. ☒ DarkLicense Plate: WEAUG 9State: IL Plate Color: WHITENumber of Occupants: 1

Type of Damage: _____

Vehicle #2: ☐ Suspect Vehicle ☒ Client Vehicle☐ Damaged Vehicle, ☐ AccidentYear: 2011 Make: CHEVYModel: 2500 HD ☒ 2 dr. ☐ 4 dr.Color: WHITE ☐ Light ☐ Med. ☐ DarkLicense Plate: 310 488 DState: IL Plate Color: WHITENumber of Occupants: 2Type of Damage: NONEEvidence: ☐ Yes, ☒ No Given to: _____

Description: _____

Video Tape: ☐ Yes, ☒ No, ☐ Actual Incident, ☐ Damage, ☐ Interview, ☐ Suspect Vehicle☐ I.D. Shots, ☐ Evidence, ☐ Other: _____ Video taken by: _____35 mm Film: ☐ Yes, ☒ No, ☐ Actual Incident, ☐ Damage, ☐ Suspects, ☐ Suspect Vehicle☐ I. D. Shots, ☐ Evidence, ☐ Other: _____ Photos taken by: _____

Describe in detail the incident as you know it happened: TRAVELING EASTBOUND ON HWY 16 BETWEEN MATTOON AND CHARLESTON CAR # 1 (PLATE WEAUG 9) APPROACHED IN PASSING LANE MOVING SLOW (PICK UP ON PASSENGER SIDE SEAT) AND CUT IN FRONT OF COMPANY TRUCK AND SLOWED SPEED. ANOTHER CAR APPROACHED (DRIVER PAT HUDSON) AND PARALLEL THE FIRST CAR, BOTH SLOWING. I PROCEEDED TO PASS WITH OTHER TRAFFIC AND (PAT HUDSON) CAR # 2 CUT BACK IN FRONT OF ME SLOWING DOWN CREATING A BLOCKADE TO THE FRONT. AFTER SEVERAL MILES I TURNED SOUTH ON COUNTRY ROAD AND RE-ROUTED TO CHARLESTON

If necessary, additional information should be attached to this sheet.

X Sing Carley
Signature of Report WriterX _____
Today's DateX TROY CONLEY
Printed Name of Report WriterX 06913
Your Title or Emp. #X [Signature]
Supervisors Signature/Date

Pat,

We have had multiple reports of your harassing, intimidating, threatening and reckless behavior towards CCI employees during the strike. You put yourself, management employees, your union brothers and the general public in peril with extremely dangerous vehicular activity on the strike line and on the public roads as you and fellow employee trapped vehicles on the picket line, impeding their progress, and then proceeded to follow and torment our drivers for up to several miles away from the strike. Several of these incidents involved employees in their personal vehicles as they were leaving company property

While there are two sides to every story, we have video evidence to support severe disciplinary steps. However, we would like to hear anything you can say about your actions.

We are sending you home immediately without pay for an indefinite suspension pending further investigation. We will contact you when we have concluded our investigation and have determined our next steps.

GC17

CCI-0148

SA - 085

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CONSOLIDATED COMMUNICATIONS D/B/A
ILLINOIS CONSOLIDATED TELEPHONE
COMPANY

and

Cases 14-CA-094626,
and 14-CA-101495

LOCAL 702, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

STIPULATIONS

COMES NOW, Counsel for the General Counsel (the "GC"), Consolidated Communications (the "Employer" or the "Company" or "Respondent"), and Local 702, International Brotherhood of Electrical Workers, AFL-CIO (the "Union" or "Charging Party"), and hereby stipulate to the following in connection with these cases. Each party retains the right to argue the relevancy, if any, of the following. In addition, each party retains the right to offer additional evidence related to the following.

1. The previous collective bargaining agreement ("CBA") between the Employer and the Union dated from November 15, 2008 to November 15, 2012. A true and accurate copy of the 2008-2012 CBA is attached hereto as G.C. Ex. 2.
2. The Employer and the Union did not reach agreement on a new CBA prior to the expiration of the 2008-2012 CBA on November 15, 2012. The parties continued bargaining without an extension of the CBA.
3. On Thursday, December 6, 2012, at 10:00 p.m., the Union commenced a strike against the Employer.

G.C. #18

4. On Tuesday, December 11, 2012, at around 5:00 p.m., the Union notified the Employer that effective the first full shift on Wednesday, December 12 the Union was ending the strike and that employees were making an unconditional offer to return to work.

5. Immediately prior to the strike, the Company employed eight (8) full time Office Specialists working in the telephone operations. There was one Office Specialist employee working in the Distributions Department (Barb Worthington), Fleet Department (Pat Hudson), Facilities Department (Brenda Weaver), Billing Department (Tina Rawlings), Credit Collections Department (Lillie Bragg), Product Management Department (Marilyn Kull), Outside Engineering Department (Barb Williams) and the C.C. IL. Communications Center (Sherrie Beck).

6. During the strike, several functions, including some of the work performed by Office Specialists, were assigned to Company affiliates.

7. After the end of the strike, although not done simultaneously, the Office Specialist duties and functions previously performed in Mattoon were returned to Mattoon.

8. The Company had two (2) vacated Office Specialist positions based on the terminations of Pat Hudson and Brenda Weaver.

9. On or around January 17, 2013, the Employer informed bargaining unit employees of an opening for an Office Specialist in the Fleet Department. A true and accurate copy of a memo for this opening is attached hereto as Jt. Ex. 1.

10. On February 26, 2013, the Employer, by one of its attorneys, informed the Union, by one of its attorneys, that a person had been selected for Office Specialist in the Fleet Department.

11. The above statement on February 26, 2013 was the first time the Employer informed the Union of the decision to not fill one of the vacated Office Specialist positions.

12. The Union immediately responded that it was not agreeing to the Company's recent determination. The Union also stated that it reserved the right to demand bargaining and restoration of the status quo and to file a ULP charge over the Company's actions with respect to the work and their positions.

13. By letter dated March 1, 2013, the Union sent a demand to bargain to the Company. A true and accurate copy of this letter is attached hereto as Jt. Ex. 2.

14. By letter dated March 9, 2013, the Company responded to the Union's demand to bargain. A true and accurate copy of this response, with furnished information, is attached hereto as Jt. Ex. 3.

15. By letter dated March 12, 2013 from the Union's attorney to the Employer's attorney, the Union replied to the Employer's March 9, 2013 letter. A true and accurate copy of this reply is attached hereto as Jt. Ex. 4.

16. At the end of the bargaining session on March 27, 2013, the Company and Union reached tentative agreement on a new collective bargaining agreement, subject to membership ratification.

17. On March 28, 2013, the Union's membership ratified the new collective bargaining agreement with the Company. A true and accurate copy of the new CBA is attached hereto as G.C. Ex. 3.

18. On April 8, 2013, Company representative Ryan Whitlock contacted Brad Beisner (Union Business Representative and Consolidated Communications IBEW Local 702 point of contact) in an attempt by Whitlock to discuss/bargain over not filling Weaver's position. Beisner agreed to meet on April 11, 2013.

19. During the April 11, 2013, meeting between Whitlock and Beisner, Whitlock offered several options regarding the Office Specialist duties that Weaver previously performed, including 1) paying the Office Specialist who was performing new duties a premium; 2) diffusing the duties even further and sharing with other Office Specialists; or 3) moving the duties to a Company affiliate. The Union insisted that the Company restore the status quo. No agreement was reached.

20. On April 18, 2013, the Company gave notice under Section 14.04 of the new Labor Agreement to transfer CCI Utility Bill Invoice Coding and CCI Facilities Asset Tracking to a Company affiliate (duties which Weaver previously performed). A true and accurate copy of the notice is attached hereto as Jt. Ex. 5.

21. By letter dated April 22, 2013, the Union responded to the notice. A true and accurate copy of the Union's letter is attached hereto as Jt. Ex. 6.

22. On May 1, 2013, Company attorney David Lonergan communicated with the Board representative, Neale Sutcliff, that the Company is "not taking the position that either the assimilation of Ms. Weaver's former job duties into the bargaining unit,

nor the subsequent transfer of some of those duties out of the unit, pursuant to 14.04 of the current Labor Agreement, is or will be a reason to deny Ms. Weaver's reinstatement or to deny her claim for back pay if they are ordered pursuant to a Board or court decision. Obviously, this is not a waiver of the Company's right to appeal an adverse decision by an ALJ, the NLRB, or the courts."

23. The following employees of the Company possessed either Section 2(11) and/or Section 2(13) authority: Steve Shirar, Anna Bright, Ryan Whitlock, Gary Patrem, Michael Croy, Troy Conley, Don Traub, Sam Jurka, Kurt Rankin, Larry Diggs, Celeste Webb, Starr Morgan and Kevin Swan.

24. Respondent's 1501 Charleston, Mattoon, office is referred to as the "Mattoon Central Office;" 121 S. 17th Street, Mattoon, office is referred to as the "Corporate Building;" the 2116 S. 17th Street, Mattoon, facility is referred to as the "Rutledge Building;" the 1000 S. Spessor Street, Taylorville facility is referred to as the Taylorville Garage; and Respondent has additional facilities in other locales including Mattoon, Charleston (Charleston Central Office, Broadband Tech Support), Taylorville (Taylorville Central Office), Litchfield (Litchfield Central Office) and Effingham (Effingham Central Office).

25. Highways 121 and 45 in Mattoon, Illinois are also referred to as Lake Land Boulevard.

26. Highway 16 in Mattoon, Illinois is also referred to as Charleston Avenue.

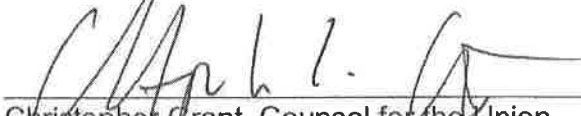
So Stipulated:



Paula Givens, Counsel for General Counsel

8/19/13
Date

David Lonergan, Counsel for the Employer



Christopher Grant, Counsel for the Union

Date

8/19/13
Date



**Huffmaster Crisis Response LLC.
Strike Operations
Labor Dispute Procedures Training**

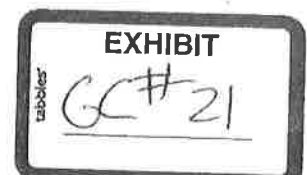
During strike conditions, there are certain procedures requiring implementation. These procedures insure that all involved personnel maintain a high level of security awareness. While most of the procedures involve simple common sense, others are based upon the psychology of the labor dispute environment.

It is important that these procedures are fully understood and adhered to. If there are any questions concerning content, philosophy, or application, contact Huffmaster security management personnel for clarification.

GENERAL PROCEDURES

- Always approach at a slow, controlled speed. Do not endanger picketers, police or security personnel by speeding.
- Observe the line security officer's hand signals while crossing the line and signal your turns.
- Keep all doors and windows rolled up when crossing the line.
- Do not converse with the strikers. Maintain an impassive facial expression.
- Do not stop your vehicle or exit at any time unless directed by the officer guiding you through the line.
- In the event that remote transportation procedures are not implemented, it is advisable to car pool with other personnel.
- If you have a company identification car or are issued an authorized pass card, please have it available and ready to present to the security officers.

Please remember not to allow the strikers to distract your attention when crossing the picket line. Your attention should be directed towards the security officer positioned at the driver's front corner of the vehicle.



SECURITY PROCEDURES –OFF PREMISE PARKING

During the strike, all employees may be transported from a remote location to and from your normal facility.

- When arriving at the alternate parking location, look for the uniformed security officer, identify yourself and ask where to park your vehicle.
- While waiting for the transport vehicle to arrive or leave, it is recommended that you stay in your vehicle with the windows up and the doors locked.
- Try to park your vehicle where it cannot be blocked in.
- If possible, car pool with other employees or be dropped off.

When leaving the remote parking location, watch for cars that may be following you. If you are followed, drive immediately to the nearest police department or back to the parking location and notify the security officer on duty.

If you encounter any problems during the course of your normal day, contact the local police department and Huffmaster security personnel for instructions. File a report.

SABATOGE PREVENTION

Prior to the contract expiration date and primarily on the last few working days, it is important to have additional supervisory personnel monitor the vital and key points of the operation through all working shifts and locations.

- Secure and restrict access to areas that can be normally considered low risk.
- Management personnel should closely supervise any repairs being performed on any machinery or equipment that is vital to the continued operations of the company. This should include the fueling and servicing of all company owned vehicles.
- Watch for product tampering, tainting, etc; particularly ingredients.
- Relieve the last shift before the strike early to prevent last minute impulse activity.

SECURITY PROCEEDURES –SPECIAL OCCURRENCES**If your vehicle is damaged during a line crossing:**

- Do not stop on, at, or near the picket line.
- Do not get out of the vehicle until you arrive at the nearest police department, arrive safely at your residence, or are inside company property.
- Report any damage to the police department and file a police report.
- Notify security personnel at the facility and complete an incident report for documentation and prosecution purposes.

If you are followed when leaving company property:

- Drive directly to the nearest police facility or return to company property, if it is closer.
- If possible, attempt to get an accurate description of the vehicle, its license plat number and its occupants. **DO NOT RISK YOUR PERSONAL SAFETY TO DO SO.**
- Notify security personnel at the 24-hour number (will be provided) to report the event and complete an incident report.

If threatened at work or at home:

- If at work, immediately notify security personnel and complete an incident report.
- If at home, immediately notify your local police department and file a report.

Illinois Consolidated Telephone Company, 08/19/13

14-CA-094626 and 14-CA-101495

Page 1

1 UNITED STATES OF AMERICA

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD

3 REGION 14

4 _____

5 |

6 In the Matter of: |

7 |

8 CONSOLIDATED COMMUNICATIONS d/b/a |

9 ILLINOIS CONSOLIDATED TELEPHONE |

10 COMPANY, |

11 |

12 Respondent, | Case Nos. 14-CA-094626

13 and | 14-CA-101495

14 |

15 INTERNATIONAL BROTHERHOOD OF |

16 ELECTRICAL WORKERS, LOCAL 702, |

17 AFL-CIO, |

18 |

19 Charging Party. |

20 _____

21

22 The above-entitled matter came on for hearing pursuant
23 to notice, before ARTHUR J. AMCHAN, Administrative Law Judge,
24 at Lake Land College, Workforce Development Center Building,
25 Room 105, 305 Richmond Avenue East, Mattoon, IL 61938, on
26 Monday, August 19, 2013, at 9:00 a.m.

A P P E A R A N C E S

Counsel for the Acting General Counsel:

PAULA B. GIVENS

National Labor Relations Board, Region 14

1222 Spruce Street, Room 8.302

St. Louis, MO 63132

(314) 539-7770

paula.givens@nlrb.gov

On Behalf of the Charging Party:

CHRISTOPHER N. GRANT

Schuchat, Cook & Werner

The Shell Building, Second Floor

1221 Locust Street, Suite 250

Saint Louis, MO 63103

(314) 621-2626

(314) 621-2378 fax

cng@schuchatcw.com

On Behalf of the Respondent:

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Dallas, TX 75202

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dlonergan@hunton.com

ROBERT T. DUMBACHER

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Bank of America Plaza

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Atlanta, Georgia 30308

(404) 888-4000

(404) 602-9010 fax

rdumbacher@hunton.com

Illinois Consolidated Telephone Company, 08/19/13

14-CA-094626 and 14-CA-101495

Page 3

1		I N D E X				
2						VOIR
3	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
4						
5	Brad Beisner	26	129	170	--	--
6		115				
7						
8	Gary Patrem	176	--	--	--	--
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1	E X H I B I T S		
2	EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
3	JOINT		
4	J-1 through J-6	10	11
5	J-7 and J-8	11	12
6	J-9(a) and 9(b)	11	12
7	GENERAL COUNSEL'S		
8	GC-1(a) through 1(m)	7	8
9	GC-2 and GC-3	12	12
10	GC-4(a) and 4(b)	31	32
11	GC-5	36	38
12	GC-6	41	42
13	GC-7	32	34
14	GC-8	46	49 - Withdrawn
15	GC-10(a) and 10(b)	50	51
16	GC-11	49	50
17	GC-12(a) and 12(b)	82	84
18	GC-12(c)	192	201
19	GC-13(a)	87	102
20	GC-13(b)	87	104
21	GC-13(c)	87	Not Offered
22	GC-14	105	109
23	GC-15	105	125
24	GC-16	105	109
25	GC-17	192	201

1		E X H I B I T S	
2	EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
3	GENERAL COUNSEL'S		
4	GC-18	10	10
5	GC-18	192	201
6	GC-19	177	178
7	GC-20	180	181
8	GC-21	187	192
9	RESPONDENT'S		
10	R-1	126	Not Offered
11	R-2	134	135
12	R-3	135	Not Offered
13			
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25			

- 1 Rutledge building.
- 2 Q. That's Joint Exhibit 7?
- 3 A. Yes.
- 4 Q. Okay. And a garage in Taylorville.
- 5 A. Yes, a garage in Taylorville and a CO in Taylorville.
- 6 Q. Okay. And the garage in Taylorville is Joint Exhibit 8.
- 7 And while we're on these exhibits, which of the suspensions
- 8 took place at the Taylorville garage?
- 9 A. Mike Maxwell.
- 10 Q. Okay. And which of the -- the rest of the events took
- 11 place where?
- 12 A. The Rutledge building.
- 13 Q. Okay. How many unit employees do you have?
- 14 A. Approximately 175.
- 15 Q. Okay. Who's in the unit?
- 16 A. Everybody.
- 17 Q. Okay. Excluding?
- 18 A. Excluding management, supervisory, some engineering
- 19 staff.
- 20 Q. Okay. Who is Greg Millsap?
- 21 A. Greg was the PANA unit chairman, the PANA unit.
- 22 Q. And PANA is P-A-N-A?
- 23 A. Yes.
- 24 Q. And the bargaining unit in this case, what does the
- 25 Union call it?

1 uh-huh, okay, and then he said if they pull any shit, fire
2 them on the spot. That was the end of the conversation.

3 Q. What happened next?

4 A. Ryan stood up. He said I've got a pretty good idea
5 what's coming, so how about you just give the information?
6 Steve handed him the letter. Right at that same time,
7 Gary Patrem entered the office. Ryan read the strike notice
8 that was given to him. We started to walk out. Ryan said to
9 me, "ULP strike, huh? That's a hard one to prove." I
10 responded, "We don't think so," and we all left the building.

11 MS. GIVENS: I offer General Counsel's Exhibit 5 into
12 evidence.

13 JUDGE AMCHAN: Any objection?

14 MR. LONERGAN: I don't see the relevance, but I don't
15 object to it.

16 JUDGE AMCHAN: I'll receive it.

17 (General Counsel's Exhibit 5 received in evidence.)

18 Q. BY MS. GIVENS: How many locations were picketed?

19 A. Ten consistently.

20 Q. Okay. In what area of the state?

21 A. Mid-eastern Illinois.

22 Q. Okay. We've talked about several. And you said that
23 the central office is also 1501 Charleston?

24 A. Yes.

25 Q. Okay. And was there picketing at the Rutledge facility?

1 A. Yes.

2 Q. Taylorville garage?

3 A. Yes.

4 Q. Central office or 1501 Building?

5 A. Yes.

6 Q. Corporate office?

7 A. Yes.

8 Q. Other locations?

9 A. Yes.

10 Q. Did you -- how long did the strike last?

11 A. Five days.

12 Q. And what, if any, reason did the strike end?

13 A. It ended because the Employer agreed to return to the
14 table.

15 Q. And who was in charge of the strike for the Union?

16 A. Steve Hughart and myself.

17 Q. Was -- was Steve on the picket line every day?

18 A. No.

19 Q. Were you?

20 A. Yes.

21 Q. Okay. Did you send employees any kind of e-mail
22 notifying them of the strike or anything like that?

23 A. No, I did not.

24 JUDGE AMCHAN: So you were picketing in various
25 locations. You said you went to the picket line every day.

1 Q. And to whom did you read it aloud?

2 A. The picketers that were there.

3 Q. Okay. And same with Friday, that's who you read it to?

4 A. Yes.

5 Q. And who did you leave -- on Friday, who did you leave
6 copies with?

7 A. Just guys on the picket line.

8 Q. Okay. Now, --

9 MS. GIVENS: I offer GC-6 into evidence.

10 MR. LONERGAN: No objection.

11 JUDGE AMCHAN: Received.

12 (General Counsel's Exhibit 6 received in evidence.)

13 Q. BY MS. GIVENS: Now, you said that you read these strike
14 instructions. What, if any, other instructions did you give
15 to strikers?

16 A. The morning of December 10th, we gave instructions on
17 ambulatory picketing.

18 Q. Where?

19 A. Mattoon corporate office and Rutledge building.

20 Q. Do you know about what time?

21 A. Around 7:00 a.m.

22 Q. Okay. And do you recall what you told people at
23 Rutledge?

24 A. Yes.

25 Q. What?

1 A. We told them that Consolidated management employees were
2 performing work, driving vehicles. Ambulatory picketing is
3 allowed. If they saw a Consolidated management employee
4 driving a Consolidated vehicle, they could follow that
5 vehicle. If it went to a residential address, they were not
6 allowed to picket there. They were to keep driving onward
7 and just leave the property. If they followed that vehicle
8 to a commercial property, they had to first make sure that
9 the person driving the truck goes into that place to perform
10 work, you know, they were carrying tools or had a bag with
11 them or something along that nature, they could picket on
12 public property, not private property. If that Consolidated
13 employee left, then they had to leave also.

14 MS. GIVENS: Six is in, right?

15 JUDGE AMCHAN: Yes.

16 Q. BY MS. GIVENS: Did -- what, if any, contact did the
17 Union have with the police during the strike?

18 A. On December 11th, myself and Steve Hughart were at the
19 Rutledge building again at approximately 7:30 talking to
20 strikers, and the Mattoon Chief of Police, Jeff Branson,
21 pulled up, asked if he could speak with me and Steve at his
22 office.

23 Q. Did you?

24 A. Yes, we did.

25 Q. Okay. Now, are you aware during the course of the

1 Q. Which is which?

2 A. On the map, the one on the left-hand side would
3 typically be your entrance.

4 Q. Okay. So the southern driveway is the entrance, and the
5 northern driveway is --

6 A. That's correct.

7 Q. -- the exit?

8 A. The exit.

9 Q. Okay. And on day 1 of the strike, was there picketing
10 at both driveways?

11 A. Yes.

12 Q. Okay. And did that cease at some point?

13 A. Yes.

14 Q. When?

15 A. Probably sometime on day 3.

16 Q. On when?

17 A. Day 3.

18 Q. Day 3. Okay. So what happened to the southern
19 driveway?

20 A. Huffmaster Security barricaded that off.

21 Q. Okay. So how many driveways -- so which driveway was in
22 use during the events here that are at issue here?

23 A. The north, northernmost one.

24 Q. Okay. All right. When did the guards show up at
25 Rutledge?

1 A. Sometime on Sunday.

2 Q. Okay. Is the guard company Huffmaster?

3 A. Yes.

4 Q. Okay.

5 JUDGE AMCHAN: Spell that.

6 MS. GIVENS: H-u-f-f-master, Huffmaster.

7 JUDGE AMCHAN: Sunday, what date?

8 THE WITNESS: Sunday would be the 9th, December 9th.

9 MR. LONERGAN: What day of the strike so we're all

10 talking about?

11 THE WITNESS: I'm sorry.

12 MR. LONERGAN: Is that day 3?

13 THE WITNESS: Yes.

14 Q. BY MS. GIVENS: Okay. So 17th Street that runs in front

15 of Rutledge, are you familiar with that?

16 A. Yes.

17 Q. Okay. You've been there?

18 A. Yes.

19 Q. Many times?

20 A. Many times.

21 Q. Even recently?

22 A. Yes.

23 Q. With a tape measure?

24 A. Yes.

25 Q. Okay. How wide is the road?

1 Q. Was it together?

2 A. It was.

3 Q. Okay. So other than the termination, she gets the same
4 documents as Pat Hudson?

5 A. Exact same.

6 Q. Okay. And were the same people present?

7 A. Yes.

8 Q. What, if anything, do you recall being said?

9 A. Again Gary said that this was a duo with Pat Hudson,
10 same three incidents. I was going through the documents. I
11 even asked, are these the exact same documents that
12 Pat Hudson received minus Brenda Weaver on the termination
13 letter. They said yes. I asked for all the information in
14 her personnel file, video, the statements. Their responses
15 were the same as with Pat. No, they didn't have video on 16.
16 They didn't have video at Rutledge. No police reports. No
17 calls to the police. No 911 calls.

18 Q. Anything else?

19 A. Witness, same thing, Jonell Rich. In one of those
20 meetings, and I don't remember if it was Pat's meeting or
21 Brenda's meeting, but I did ask, I think Warren Evans asked
22 actually where Jonell Rich was at.

23 Q. And?

24 A. And the response was she was on the second floor of the
25 Rutledge building.

1 A. I did it again last night.

2 Q. Okay. Are you familiar with the Cross County Mall on
3 16?

4 A. Right.

5 Q. Okay. Did you have an opportunity to observe the speed
6 limit on Highway 16? It's also called Charleston Avenue,
7 isn't it?

8 A. Yeah.

9 Q. Did you have an opportunity to observe the speed limit
10 or speed limit sign around Cross County Mall?

11 A. Yes.

12 Q. Okay. What's the speed limit?

13 A. Right at the Logan, I can't remember if it's Logan
14 Street or Logan Avenue, Logan Road, it goes to 45.

15 Q. And then as you're headed east, what about when you hit
16 the Interstate 57, what's the speed limit there?

17 A. I believe it would still be 45 right there.

18 Q. Okay. And at some point, does it turn into 55 headed
19 east on Highway 16?

20 A. Yes.

21 Q. Okay. Where is that?

22 A. Right after Lerna Road.

23 MS. GIVENS: Lerna, L-e-r-n-a.

24 THE WITNESS: Lerna.

25 Q. BY MR. GRANT: And does it stay 55 after Lerna Road?

1 A. Yes, to the best of my memory, all the way to
2 Charleston.

3 Q. At the suspension meeting with Eric Williamson -- let me
4 back up. You testified earlier to a conversation you had
5 with the Chief of Police of Mattoon and specifically about
6 the mirror incident.

7 A. A mirror incident, yep.

8 Q. At Eric Williamson's suspension meeting, did that
9 discussion come up?

10 A. Yes, Steve Hughart mentioned that, that him and I had
11 spoken to the Chief of Police of Mattoon, Jeff Branson, and
12 he mentioned a mirror incident but said there was no
13 wrongdoing or nothing intention, no damage. Sam Jurka's
14 reply to that was we'll investigate that.

15 Q. At Pat Hudson's termination meeting, did you ask any
16 questions about the Sarah Greider incident?

17 A. I may have. If I could look at my notes, it might
18 refresh my memory.

19 Q. Do you remember posing a question about how it could
20 have happened?

21 A. Yes, I asked Gary and Anna if they felt there was any
22 way Pat could have been leaving about the same time as Sarah
23 and/or Kurt for that matter, and they felt that that was not
24 really probable.

25 MR. GRANT: If I may approach the witness --

- 1 A. I believe from Pennsylvania.
- 2 Q. Okay. He's a company employee who works there, correct?
- 3 A. Yes, ma'am.
- 4 Q. Okay. In IT?
- 5 A. I'm not positive.
- 6 Q. Okay. And he was in town during the strike to get some
- 7 work done, yes?
- 8 A. Yes, ma'am.
- 9 Q. And that's why he was in the car with Leon Flood?
- 10 A. Yes, ma'am.
- 11 Q. Okay. And you had several other people from out of town
- 12 during the strike, did you not?
- 13 A. Yes, ma'am.
- 14 Q. Larry Diggs.
- 15 A. Yes.
- 16 Q. Okay. He was from Texas?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And the guys that came in from out of town, they
- 19 didn't leave until when? They didn't leave until the strike
- 20 was over, right?
- 21 A. I believe that to be true.
- 22 Q. Okay. And so, for example, Fetchak and Diggs, they were
- 23 still in town on Thursday, for example, when everybody went
- 24 back to work, the 13th?
- 25 A. I'm not sure when some of them left.

Illinois Consolidated Telephone Company, 08/20/13

14-CA-094626 and 14-CA-101495

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1 UNITED STATES OF AMERICA

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD

3 REGION 14

4 _____

5 _____

6 In the Matter of: _____

7 _____

8 CONSOLIDATED COMMUNICATIONS d/b/a _____

9 ILLINOIS CONSOLIDATED TELEPHONE _____

10 COMPANY, _____

11 _____

12 Respondent, _____ Case Nos. 14-CA-094626

13 and _____ 14-CA-101495

14 _____

15 INTERNATIONAL BROTHERHOOD OF _____

16 ELECTRICAL WORKERS, LOCAL 702, _____

17 AFL-CIO, _____

18 _____

19 Charging Party. _____

20 _____

21

22 The above-entitled matter came on for hearing pursuant

23 to notice, before ARTHUR J. AMCHAN, Administrative Law

24 Judge, at Lake Land College, Workforce Development Center

25 Building, Room 105, 305 Richmond Avenue East, Mattoon, IL

26 61938, on Tuesday, August 20, 2013, at 8:30 a.m.

A P P E A R A N C E S

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14-CA-094626 and 14-CA-101495

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1	I N D E X					
2						VOIR
3	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
4						
5	Gary Patrem	269	347	355	376	---
6		338		373		
7						
8	Ryan Whitlock	380	---	---	---	---
9						
10	Kurtis W. Rankin	448	452	455	465	---
11				459	484	
12				474		
13				478		
14						
15	Ryan Whitlock	485	---	---	---	---
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17	Michael Maxwell	493	507	---	---	---
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14-CA-094626 and 14-CA-101495

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1

E X H I B I T S

2

EXHIBITS

FOR IDENTIFICATION IN EVIDENCE

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JOINT

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J-7 (a)

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1 upper management?

2 A. I believe Mr. Whitlock or Mrs. Bright. I don't

3 remember.

4 Q. You don't remember?

5 A. No, ma'am.

6 Q. Okay. And do you remember what you were told as to why
7 they were being discharged?

8 A. I don't know that I was told. There were other reasons
9 other than what my recommendation was based upon.

10 Q. So as far as you know, the reason they were fired or the
11 reasons, that your recommendation was based upon what you
12 said in their discharge meeting, correct?

13 A. Yes, ma'am.

14 Q. Okay. And so Hudson and Weaver followed employees from
15 the strike line at Rutledge onto Charleston Avenue, in your
16 view, correct?

17 A. I do know from the incident report that Sarah Greider
18 was passed by those vehicles on Charleston Avenue.

19 Q. By the mall?

20 A. Correct.

21 Q. We are at the mall, are we not?

22 A. Yes, ma'am.

23 Q. Okay. And do you have any idea how far away Rutledge
24 is?

25 A. Not exactly, no.

1 A. Nothing from directly that he had written, but the speed
2 limit on Route 55 or Route 16 is 55.

3 Q. Not everywhere.

4 A. There is a 45 section and there is, yeah, or there is a
5 50 section and a 55 section past the interstate.

6 Q. Right past the interstate, is it not 45?

7 A. 45 up until Loxa Road, then it's 55, correct.

8 Q. Okay. But how do you know how fast they were going?

9 A. At this point in time, I didn't know how fast he was
10 going.

11 Q. Right. You assumed it?

12 A. Based on the speed limit and based on -- yes.

13 Q. You assumed it?

14 A. Yes, I did.

15 Q. Okay. And, okay, Mr. Conley reports that he was honked
16 at. Did the honking at all factor into the discharge of
17 these women, in your mind?

18 A. It was distractful when he was traveling at that rate of
19 speed, my assumed rate of speed for him, yes.

20 Q. Okay. Do you think the honking was in any way
21 dangerous?

22 A. That in and of itself, no.

23 Q. No, okay. So honking is pretty harmless, is it not?

24 A. It's distractful. So at that rate of speed, I mean it
25 was distracting to him, and I think that was the intent, so

1 A. Yes, sir.

2 Q. He was at the picket line at the Taylorville Garage?

3 A. Yes, sir.

4 Q. And he would be treated like a pedestrian, right?

5 A. I believe the difference is that he was not patrolling
6 or moving when the incident with Mr. Flood occurred.

7 Q. So if a pedestrian is not moving, if that's the case,
8 then a car -- he does not have the right-of-way and a car
9 can go through that pedestrian; is that correct?

10 A. No. I'm just saying that he was not patrolling and he
11 was, at that point, one of the points in that incident,
12 leaning against the vehicle.

13 Q. I'm sorry. Maybe my question wasn't clear. Let me ask
14 it again. Are you saying if he -- are you saying that
15 Mike Maxwell did not have the right-of-way?

16 A. No, I'm not saying that.

17 Q. Did he have the right-of-way?

18 A. Yes, he did.

19 Q. Okay. And can a car go through or endanger someone if
20 they have the right-of-way?

21 A. I don't know.

22 Q. I'm sorry?

23 A. I don't know.

24 Q. You've testified that the speed limit out on Highway 16,
25 does it turn 55 at Loxa Road or at Lerna Road?

1 A. I believe Lerna Road.

2 Q. At Lerna Road, okay. And do you remember Ms. Hudson's
3 suspension meeting, do you remember Mr. Hughart asking do
4 you know what ambulatory picketing is?

5 A. He did ask that question.

6 Q. And that was at her -- that was at the December 13th
7 meeting, right?

8 A. That's correct.

9 Q. Okay. And did you know what ambulatory picketing was?

10 A. At that point in time, I did not, no.

11 Q. Did you ask, at that point?

12 A. Did I ask at that meeting?

13 Q. Yeah.

14 A. No.

15 Q. Okay. Did you subsequently find out what ambulatory
16 picketing is?

17 A. I reviewed it or I searched on the internet and saw a
18 couple of descriptions of ambulatory picketing.

19 Q. When did you do that?

20 A. Sometime after the meeting.

21 Q. Before the termination?

22 A. Yes, sir.

23 Q. Did you then, once you find that out, go back to the
24 Union and say, ask more questions about whether Ms. Hudson
25 or Ms. Weaver were engaged in ambulatory picketing?

Illinois Consolidated Telephone Company, 08/21/13

14-CA-094626 and 14-CA-101495

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1 UNITED STATES OF AMERICA

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD

3 REGION 14

4

5

6 In the Matter of:

7

8 CONSOLIDATED COMMUNICATIONS d/b/a

9 ILLINOIS CONSOLIDATED TELEPHONE

10 COMPANY,

11

12 Respondent,

13 and

14

15 INTERNATIONAL BROTHERHOOD OF

16 ELECTRICAL WORKERS, LOCAL 702,

17 AFL-CIO,

18

19 Charging Party.

20

21

22 The above-entitled matter came on for a hearing pursuant
23 to notice, before ARTHUR J. AMCHAN, Administrative Law Judge,
24 at Lake Land College, Workforce Development Center Building,
25 Room 105, 305 Richmond Avenue East, Mattoon, IL 61938, on
26 Wednesday, August 21, 2013, at 8:30 a.m.

A P P E A R A N C E S

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1	I N D E X					
2						VOIR
3	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
4						
5	Jeffrey M. Branson	531	549	565	575	---
6		538		573		
7						
8	Ryan Whitlock	578	580	583	585	--
9				585		
10						
11	Brenda S. Weaver	587	641	691	694	--
12		638		692	696	
13				695		
14						
15	Eric Williamson	705	721	748	--	--
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1		E X H I B I T S	
2	EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
3	GENERAL COUNSEL'S		
4	GC-10 (c)	609	634
5	GC-22 (a)	630	634
6	GC-22 (b)	631	634
7	GC-23	749	751 - Withdrawn
8	RESPONDENT'S		
9	R-4 and R-5	755	755

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1 solid memory of somebody turning off, or if that came from
2 something somebody else said to you?

3 MR. LONERGAN: Objection. You're instructing the
4 witness.

5 MS. GIVENS: I think it was fair.

6 MR. LONERGAN: That's not fair. That's not the reg.

7 JUDGE AMCHAN: Well, I guess her question is did you
8 have any recollection of the car turning prior to meeting
9 with Ms. Givens?

10 THE WITNESS: Prior to meeting with -- no.

11 JUDGE AMCHAN: Okay. Thank you.

12 Q. BY MS. GIVENS: Was there a time when you followed Pat
13 on 17th Street on Monday, December 10th?

14 A. Yes.

15 Q. Okay. And where were you going?

16 A. We were going to picket up at corporate, but first we
17 were going to go by Lawson Park.

18 Q. Lawson, L-a-w-s-o-n?

19 A. Yes.

20 Q. Why were you going to go by Lawson Park?

21 A. That's the park my husband saw a couple of company
22 trucks parked, sitting and not doing anything. We wanted to
23 see if there were still trucks there parked, not doing
24 anything.

25 Q. Okay. And the driving that is depicted on the video we

1 just saw, that's marked on the video at 10:03, do you have
2 any recollection of whether or not that is the time you were
3 driving to Lawson Park, do you know?

4 A. Yes, it is.

5 Q. Okay. And how do you get to Lawson Park from Rutledge,
6 do you know?

7 A. Yeah, just go the direction we were going down -- north
8 on 17th Street. When you get to the end, there is Rudy
9 Avenue, and you have to turn right or left. We turned right.
10 You go a few blocks, and then you get to 14th Street, and you
11 turn left onto 14th Street, and Lawson Park is down around
12 Maple and 14th.

13 Q. Okay. So you go by Lawson Park, what do you see?

14 A. Nothing.

15 Q. Nothing?

16 A. Nobody was there.

17 Q. Oh, okay.

18 (General Counsel's Exhibit 10(c) marked for identification.)

19 Q. BY MS. GIVENS: I'm going to give you what I am going to
20 mark as GC Exhibit 10(c). And so on the map, you drove north
21 on 17th Street and then turned where?

22 A. Onto Rudy.

23 Q. Right or left?

24 A. Right.

25 Q. Then where?

- 1 A. Then down to 14th Street.
- 2 Q. Then where?
- 3 A. Turned left.
- 4 Q. Okay. And then where?
- 5 A. We went down to the stoplight at Charleston Avenue.
- 6 Q. Okay. And you were on your way to where via Lawson
- 7 Park?
- 8 A. We went by Lawson Park.
- 9 Q. Going where again?
- 10 A. We were heading to the corporate building to picket.
- 11 Q. Okay. And Pat was in the lead?
- 12 A. Yes, she was in front of me.
- 13 Q. Did you get to corporate?
- 14 A. Eventually.
- 15 Q. Okay. Did you get to corporate right then?
- 16 A. No.
- 17 Q. What happened?
- 18 A. Pat turned right onto Charleston Avenue, and I followed
- 19 her.
- 20 Q. Which way is corporate?
- 21 A. Left.
- 22 Q. Okay. And at the time, did you know why she turned
- 23 right on Charleston?
- 24 A. No.
- 25 Q. Okay. At some point driving down Charleston, did you

1 figure out why she turned on Charleston?

2 A. At some point I noticed there was a company truck in
3 front of her, and I assumed she was following it to see where
4 it was going -- to see if it was a commercial site that we
5 could picket.

6 Q. Now, looking at that map, if Sarah Greider or anyone
7 turned into Pilson's and they wanted to go to the Cross
8 County Mall, where we are, sitting at Lake Land Boulevard
9 coming out of Pilson's, how would you get to say Charleston?
10 Would you turn right or left?

11 A. Are you asking how Sarah would have gotten there?

12 Q. I'm asking you. If you're sitting on Lake Land
13 Boulevard and you want to go to the mall, do you turn right
14 or left?

15 A. Oh, right.

16 Q. Okay. So you turn right, and you go all the way up Lake
17 Land Boulevard, which is marked as what highway?

18 A. 121.

19 Q. Okay. And does that intersect Charleston at some point?

20 A. Yes.

21 Q. Okay. And so a person could turn right or left if they
22 wanted to go to the Cross County Mall?

23 A. They would turn right.

24 Q. Okay. And at some point they would reach the Cross
25 County Mall, correct?

1 A. Yes.

2 Q. Okay. And so you and Pat as you're driving and the
3 truck is in front of Pat, do you know at what point you were
4 finally able to see the truck and figure out what she's
5 doing?

6 A. I don't remember at what point.

7 Q. Okay. How far ahead of Pat was the truck, if you know,
8 the first time you saw it?

9 A. I don't remember.

10 Q. You don't remember? Okay. And at some point did you
11 and Pat cross the Cross County Mall?

12 A. I'm sure we did because we kept going that way.

13 Q. Okay. The end of the story is you drove all the way out
14 to where -- about where?

15 A. Somewhere past Sarah Bush.

16 Q. Okay. What about somewhere past County Road 1200 East?

17 A. Yes.

18 Q. Okay.

19 A. Right around in there.

20 Q. Okay. And so there is a truck in front of Pat. Is it
21 like a marked van or a truck?

22 A. It's a truck.

23 Q. It's a company truck?

24 A. Yes.

25 Q. And do you know between -- let's say any time you turned

1 right on Charleston and Highway 57, do you have any idea how
2 close Pat was to the vehicle at that time?

3 A. No.

4 Q. Okay. And was the truck in front or behind Pat?

5 A. In front.

6 Q. And where were you?

7 A. Behind Pat.

8 Q. Okay. At some point did either you or Pat pass the
9 truck?

10 A. Yes.

11 Q. Who did it?

12 A. I did.

13 Q. Okay. And where were you on Charleston/16 when you
14 passed the truck?

15 A. I believe it was around Sarah Bush or a little past.

16 Q. Okay.

17 A. Probably closer to Loxa Road.

18 Q. Okay. Did you have your picket sign in your car with
19 you?

20 A. It was in my front seat.

21 Q. Okay. When you passed the truck, where was Pat?

22 A. Somewhere back behind.

23 Q. No, when you started to pass?

24 A. When I started to pass, she was behind the truck.

25 Q. Okay. And so where was she in relation to you?

- 1 A. She was still behind the truck.
- 2 Q. And where was Pat and the truck? In front of you?
- 3 A. I'm sorry say that again?
- 4 Q. Where were you? Were you in front or back before you
- 5 passed?
- 6 A. Before I passed --
- 7 Q. Who was in front of you?
- 8 A. Nobody.
- 9 Q. What lane were you guys driving down 16?
- 10 A. We were in the slow lane.
- 11 Q. The right lane?
- 12 A. Right.
- 13 Q. Okay. And whose car is first in line?
- 14 A. Pat's -- well, the truck, then Pat, then me.
- 15 Q. Okay. And that changes, according to you, sometime
- 16 right after Sarah Bush?
- 17 A. Yes.
- 18 Q. Okay. What did you do?
- 19 A. I moved over into the fast lane and pulled up beside the
- 20 truck to see who was driving.
- 21 Q. Okay. Did you look?
- 22 A. Yes, I looked, and I saw that it was Troy Conley.
- 23 Q. Okay. Do you know Troy Conley?
- 24 A. Yes.
- 25 Q. Okay. And you are now, as we're discussing, beside him?

1 A. Yes.

2 Q. Okay. How long approximately did you drive beside him?

3 A. Moments.

4 Q. Moments? Then what?

5 A. Then I sped out a little bit and moved into the slow
6 lane, the right lane again.

7 Q. Did you slam on your brakes?

8 A. No, I just resumed normal speed -- the speed limit.

9 Q. Did you brake at all?

10 A. No.

11 Q. Did you slam on your brakes?

12 A. No.

13 Q. Did you swerve?

14 A. No.

15 Q. Did you flip him off?

16 A. No.

17 Q. Did you honk?

18 A. I may have. I don't remember.

19 Q. You don't know?

20 A. I don't remember, but I may have.

21 Q. So now you're in front. How far behind you was he?

22 A. A car length. I don't know.

23 Q. Did you see?

24 A. I don't know the exact distance. I mean he was behind
25 me.

1 Q. Do you know approximately how far? If you don't know,
2 don't --

3 A. No. I mean I don't know distance, so.

4 JUDGE AMCHAN: Do you have any recollection of how much
5 distance there was between your car and his car when you got
6 back into the right lane?

7 THE WITNESS: Probably a car length -- like the length
8 of a car.

9 Q. BY MS. GIVENS: And so how long approximately are you
10 driving where you're in the front, Troy Conley, and then
11 Pat Hudson? How long does that last?

12 A. Just moments.

13 Q. Okay. And tell me how many moments -- how long?

14 A. Several cars passed in the fast lane past all of us.

15 Q. Okay, and then what?

16 A. Then I saw Pat coming up in the fast lane.

17 Q. Okay, and then what?

18 A. And then I saw Troy Conley in my rearview mirror turn
19 off onto a country road.

20 Q. Then what?

21 A. Then Pat proceeded up to the next turnaround and just
22 turned around to head back towards corporate, and I followed
23 her.

24 Q. Okay. Do you have a cell phone?

25 A. I do.

1 A. Yes.

2 Q. Okay. Now, I am going to ask you to imagine a center
3 line, if one could exist on 17th Street?

4 A. Okay.

5 Q. As Kurt Rankin passed Pat Hudson's car on that day, did
6 she move anywhere to the left of that center line in toward
7 Mr. Rankin?

8 A. No.

9 Q. Do you know if she sped up or not?

10 A. No, she did not.

11 Q. And did she swerve at all in any direction?

12 A. No.

13 Q. Troy Conley -- you passed Troy Conley how many times?

14 A. Once.

15 Q. And when you passed him, you turned to look at him, and
16 the purpose of that was what?

17 A. To see who was driving the truck, so that if we followed
18 him to a site where we could picket, we could report it back
19 to the Union. Also that way they could know if he's got the
20 credentials to drive the type of truck he's driving to do the
21 work.

22 Q. So there are like licensure requirements for some of
23 those trucks?

24 A. Some of the trucks require CDL and things like that.

25 Q. Okay. So is there a reason that you and Pat -- that you

1 didn't end up going to wherever he was going that day?

2 A. He turned off on a country road.

3 Q. Okay. How come you couldn't follow him?

4 A. I assumed he was going to a residential location, but
5 Pat turned off at the next turnaround, and I followed her.

6 Q. Had Pat wanted to follow him, how would that have worked
7 if he turned off on a country road behind you guys?

8 A. We would not have been able to.

9 Q. Why?

10 A. Because we had already passed that road.

11 Q. Is it a divided highway at that point?

12 A. (No audible response.)

13 Q. I mean what's the problem? Isn't it a two-lane highway?

14 A. It's two lanes going east and two lanes going west. It
15 is closed off through most parts of the middle. Occasionally
16 there is a turnaround where you can turn around and get on
17 the other side.

18 Q. Okay. And so what would you have had to have done at
19 that point to have continued to follow him? Just walk me
20 through it.

21 A. I don't know. I would have tried to turn on the next
22 country road and try and figure out where he would be. I
23 don't know.

24 Q. Did you see whether or not when you went back in that
25 direction that he stayed on the country road?

1 Q. So you do recall then going down to what was the name of
2 that park?

3 A. Lawson Park.

4 Q. Okay. You do recall going down there?

5 A. Yes.

6 Q. Okay. And was one of the purposes as you were going
7 down there, were you looking for, not just company trucks
8 that might have been at Lawson, but just company trucks in
9 general?

10 A. No, just the company trucks that my husband had seen
11 there in the morning.

12 Q. And then where were you going to go after that?

13 A. To the corporate building to picket.

14 Q. And why did you change your mind?

15 A. I was following Pat, and she turned right at the
16 stoplight, so I followed her.

17 Q. Okay. Did you see the ICT truck come from Charleston
18 heading east?

19 A. I did see a truck go by on the road when we were sitting
20 at the stoplight.

21 Q. Okay. Which stoplight would that be?

22 A. That's the one at the corner of 14th and Charleston.

23 Q. Would that be on General Counsel's 10(c)?

24 A. Yes.

25 Q. Okay. And please tell me again, which road that would

1 and pulled alongside Troy Conley and then eventually moved in
2 front of him.

3 Q. Okay. At the time you pulled around Troy Conley, was
4 Ms. Hudson already in front of him?

5 A. She was behind him.

6 Q. Was she in front of you?

7 A. She was in front of me, and then Troy Conley was in
8 front of her.

9 Q. Okay. So my question was, where did you pull around in
10 front of Ms. Hudson?

11 A. Well, I didn't get directly in front of her. She was in
12 the slow lane, and I was in the passing lane.

13 Q. Okay.

14 JUDGE AMCHAN: So did you pass them both?

15 THE WITNESS: I passed them both.

16 JUDGE AMCHAN: At the same time?

17 THE WITNESS: Yes.

18 Q. BY MR. LONERGAN: And that was around Miller Road?

19 A. No, that was around by Sarah Bush and Loxa Road.

20 Q. Okay. So at Miller Road, you're saying that both of you
21 were behind Conley?

22 A. Correct.

23 Q. Okay. And then at Loxa Road you passed both of them?

24 A. I was moving along. I don't remember at exactly what
25 point I moved from beside him to in front of him.

- 1 Q. Did those three or four cars pass you?
- 2 A. Yes.
- 3 Q. How fast were you going?
- 4 A. Around the speed limit -- I believe it was around 55.
- 5 Q. And then when did Hudson pull up -- and then Hudson
- 6 pulled up alongside Conley?
- 7 A. Some time after all of the other cars had passed.
- 8 Q. Did she get in that lane of cars that were passing
- 9 you -- was she the last of the cars to pass you?
- 10 A. I'm not sure. She just later showed up in that lane.
- 11 Q. And where was that on the map?
- 12 A. Probably somewhere in between Loxa and County Road 1200.
- 13 Q. And are we looking on 9(a) and 9(b)?
- 14 A. I'm looking at 10(c).
- 15 Q. Okay. And show me on 10(c) -- tell me again, please?
- 16 A. You'll see it says Old State Road in the center, it's
- 17 got Loxa Road to the left on the map, and then North County
- 18 Road 1200 East on the right.
- 19 Q. Okay. At that point in time, somewhere in between
- 20 there, you noticed Hudson to the side of Conley?
- 21 A. Yes, I believe so.
- 22 Q. Okay. Did Conley try to pass you?
- 23 A. No.
- 24 Q. Do you have any idea why Hudson pulled up beside of
- 25 Conley?

1 A. I do not.

2 Q. Did you ever talk to her about it?

3 A. She may have said she was looking to see where I was
4 going -- where I went.

5 Q. Couldn't she see that when she was still right in front
6 of Conley?

7 A. I was in front of Conley. She was back behind Conley.

8 Q. Okay. And then she pulled to the side of Conley?

9 A. Yeah.

10 Q. So you're driving down, and you agree that at some point
11 in time you're driving down 16th; you're in front of him and
12 she's on his side?

13 A. Yes, at some time.

14 Q. And for how long do you think that went on?

15 JUDGE AMCHAN: Are you asking how long was Hudson next
16 to Conley?

17 MR. LONERGAN: Yes.

18 THE WITNESS: I believe she pulled up maybe closer to
19 me, but he turned off on County Road 1200. He turned right.

20 Q. BY MR. LONERGAN: Okay. So she was on his side for how
21 long? Can you mark it on the map?

22 A. I don't know exactly where on the map, just somewhere in
23 between there.

24 JUDGE AMCHAN: Is County Road 1200 the thing that also
25 says "Troy turnoff corner"?

1 THE WITNESS: What are you looking at?

2 JUDGE AMCHAN: This is --

3 THE WITNESS: I can't tell. This is 1200 here
4 (indicating), but I don't know what road that is. They are
5 different, so it's hard to tell.

6 JUDGE AMCHAN: Okay, so the witness can't really tell on
7 9(b) where Conley turned off.

8 THE WITNESS: I can't tell on Exhibits (a) and b) if
9 it's the same part on 10(c).

10 JUDGE AMCHAN: Okay, but looking at 10(c)?

11 THE WITNESS: Looking at 10(c), it's County Road 1200
12 East.

13 JUDGE AMCHAN: Okay. So you can identify 10(c) as where
14 he turned off?

15 THE WITNESS: Where he turned off.

16 JUDGE AMCHAN: He turned right?

17 THE WITNESS: He turned right and went down this country
18 road.

19 Q. BY MR. LONERGAN: Okay. And at this time, Ms. Hudson was
20 on the side?

21 A. I'm sorry what?

22 Q. At this time Ms. Hudson was on his side?

23 A. By the time he turned off, she was moving along my side,
24 and moved on up ahead of me -- after he turned off.

25 Q. Okay. Was she directly ahead of you at that time or was

1 she just to your side?

2 A. I do not remember.

3 Q. Okay. So he turns off at your 10(c) -- at County Road
4 1200 E?

5 A. Yes.

6 Q. And she originally, you're saying, pulled up to his
7 side. Do you think you could put a mark on --

8 MR. LONERGAN: Judge, could we have the witness put a
9 mark on Exhibit 10(c)?

10 MS. GIVENS: No.

11 MR. LONERGAN: Could we make a copy of it later and do
12 that?

13 MS. GIVENS: If she can identify the place. Let's find
14 out first.

15 Q. BY MR. LONERGAN: Can you?

16 A. I can't say. I mean I could just guess. I couldn't say
17 exactly where.

18 Q. Okay, that's good enough. You don't know?

19 A. No.

20 Q. Okay. And how fast were you going this whole time?

21 A. Whatever the speed limit was. I believe that 55 is the
22 speed limit through there.

23 Q. And so you just drove the speed limit?

24 A. Within the speed limit. I can't say exactly if it was
25 56, 54. I can't say exactly.

1 Q. Somewhere between 56 and 54?

2 A. No, I'm just saying that I can't pinpoint exactly what
3 the speedometer said, but it was around the speed limit.

4 Q. And what is the speed limit there?

5 A. 55.

6 Q. Okay. You never saw Mr. Conley after that on that day?

7 A. No.

8 Q. Did you ever go looking for him?

9 A. No.

10 JUDGE AMCHAN: You may have answered this before. So
11 after he turns off, what happens next -- where do you go?

12 THE WITNESS: There's a turnoff shortly after that, that
13 you can turn around and go back west down Route 16. Pat went
14 on up ahead, turned in the turnaround and I followed her, and
15 we went back to corporate.

16 Q. BY MR. LONERGAN: Would you care to say that it was soon
17 after you pulled in front of Conley that Hudson went in the
18 left lane and went alongside Conley?

19 A. I mean it all happened really fast. It was just really
20 quick, one step after the other.

21 Q. Okay. So you pulled in front of Conley, and very soon
22 Hudson pulled next to Conley?

23 MS. GIVENS: That mischaracterizes her testimony of the
24 events.

25 MR. LONERGAN: Was it soon or not?

Illinois Consolidated Telephone Company, 08/22/13

14-CA-094626 and 14-CA-101495

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1 UNITED STATES OF AMERICA

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD

3 REGION 14

4 _____

5 _____ |

6 In the Matter of: |

7 _____ |

8 CONSOLIDATED COMMUNICATIONS d/b/a |

9 ILLINOIS CONSOLIDATED TELEPHONE |

10 COMPANY, |

11 _____ |

12 Respondent, | Case Nos. 14-CA-094626

13 and | 14-CA-101495

14 _____ |

15 INTERNATIONAL BROTHERHOOD OF |

16 ELECTRICAL WORKERS, LOCAL 702, |

17 AFL-CIO, |

18 _____ |

19 Charging Party. |

20 _____ |

21

22 The above-entitled matter came on for hearing pursuant
23 to notice, before ARTHUR J. AMCHAN, Administrative Law Judge,
24 at Lake Land College, Workforce Development Center Building,
25 Room 105, 305 Richmond Avenue East, Mattoon, IL 61938, on
26 Thursday, August 22, 2013, at 8:30 a.m.

A P P E A R A N C E S

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1	I N D E X					
2						VOIR
3	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
4						
5	Patricia Hudson	761	818	847	857	--
6		816		854		
7						
8	Troy Conley	859	873	--	--	--
9			915			
10			922			
11						
12	Frank Fetchak	926	937	952	--	--
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14	Lawrence Diggs	953	958	--	--	--
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Illinois Consolidated Telephone Company, 08/22/13

14-CA-094626 and 14-CA-101495

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1	E X H I B I T S		
2	EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
3	RESPONDENT'S		
4	R-6	868	--
5	R-7	872	873
6	R-8	935	937
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1 P R O C E E D I N G S

2 (Time Noted: 8:50 a.m.)

3 MS. GIVENS: Okay. General Counsel calls our next
4 witness, Pat Hudson.

5 JUDGE AMCHAN: Good morning. I'm going to swear you in.

6 MS. HUDSON: Okay.

7 JUDGE AMCHAN: Raise your right hand.

8 (Whereupon,

9 PATRICIA HUDSON

10 was called as a witness by and on behalf of the General
11 Counsel and, having been first duly sworn, was examined and
12 testified as follows:)

13 JUDGE AMCHAN: Okay. Have a seat. Be sure and keep
14 your voice up because the microphone records. It does not
15 amplify. If you have to shout, shout.

16 THE WITNESS: All right. Thank you.

17 DIRECT EXAMINATION

18 Q. BY MS. GIVENS: Good morning.

19 A. Good morning.

20 Q. Please state your name.

21 A. Patricia Hudson.

22 Q. How long did you work for the Company?

23 A. Thirty-nine years.

24 Q. When did you start?

25 A. February of '74.

1 Q. On what date did your employment end?

2 A. December 17 of last year.

3 Q. And before your termination, what was your job title?

4 A. I was an office specialist in the fleet department.

5 Q. Okay. And are you the -- were you -- were there any
6 other office specialists in your department?

7 A. Not in my department.

8 Q. Okay. And who's your direct supervisor?

9 A. Mike Croy.

10 Q. And who else did he supervise that you know of?

11 A. Celeste Webb, David Floyd, and Brenda Weaver.

12 Q. And what department are those folks in?

13 A. Celeste was in the warehouse, David Floyd was in
14 maintenance, and Brenda was in facilities.

15 Q. Okay. Have you been continuously employed by
16 Consolidated since 1974?

17 A. Yes, I have.

18 Q. Do you -- what, if any, disciplinary history do you have
19 with the Company?

20 A. None.

21 Q. Are you familiar with Kurt Rankin?

22 A. I know the name. I don't know him personally.

23 Q. Do you know where he works?

24 A. I believe he worked at the 1501 Building.

25 Q. Have you ever ridden in his personal vehicle?

1 reasons?

2 A. On occasion maybe.

3 Q. Did you use the work cell phone for any personal reasons
4 on Monday, December 10th?

5 A. No.

6 Q. Did you have it?

7 A. The Company had turned it off.

8 Q. Okay. Did you have any other working cell phone in the
9 family?

10 A. My husband carried one.

11 Q. Did you have that with you on December 10th?

12 A. No, I did not.

13 Q. How many days did you participate in the Union's strike?

14 A. I was on the picket line every day but one.

15 Q. What day was that?

16 A. I was not there on Saturday.

17 Q. And where did you picket?

18 A. Most of the time I was at the Rutledge building on South
19 17th Street.

20 Q. Why were you picketing at Rutledge?

21 A. That's where my office was.

22 Q. Did you happen to see at Rutledge picketing any non-
23 Consolidated employees?

24 A. Ask me that again.

25 Q. Did you see anybody on the picket line who was not

1 A. Yes, Steve Hughart called us together in kind of a
2 group, and he told us he wanted a safe picket. He told us
3 about ambulatory picketing. He didn't want anybody to, you
4 know, get hurt or anything just picketing.

5 Q. What day was this?

6 A. That would have been on Friday.

7 Q. Okay. At what time?

8 A. Well, I was at the Rutledge building.

9 Q. Was any other Union representative there with him?

10 A. I think Cole Branson might have been there. I don't
11 recall who all was at that meeting.

12 Q. Do you have any recollection if Brad Beisner was there?

13 A. I knew he was there on a couple of occasions. I don't
14 know if it was that particular meeting or not.

15 Q. What -- did -- what, if anything, did Steve Hughart say
16 about you said ambulatory picketing? Was that explained to
17 you?

18 A. Well, he said if we seen any salaried people on
19 commercial property, report back to the Union or to our team
20 leader and that they might send someone -- some picketers out
21 there to picket the commercial sites.

22 Q. Okay. Now, did you ever overhear any conversation with
23 any other Union representative about ambulatory picketing at
24 any time during strike?

25 A. I don't believe so.

1 Q. Did you, did you -- do you know how many times you drove
2 past the Rutledge building on December 10th?

3 A. No, I don't know how many times. I know I drove by it
4 in support of the strikers.

5 Q. And what's that mean? What did you do?

6 A. Well, we honked and waved and cheered them on and, you
7 know, just in support of the pickets.

8 Q. And when you say we, who are you talking about?

9 A. Well, I drove myself a couple of times. I had a couple
10 of people with me on a couple of occasions.

11 Q. Who did you have with you?

12 A. I had Brenda and -- new neighbor on that day.

13 Q. Okay. Did you have anybody else with you in your car
14 driving past Rutledge on that day?

15 A. No.

16 Q. And so was there a time where you were driving past
17 Rutledge and Brenda Weaver was following you?

18 A. Yes.

19 Q. On the 10th.

20 A. On the 10th.

21 Q. Okay. And did you know she was following you?

22 A. We had planned to meet at corporate. I knew we left at
23 the same time, so she was behind me somewhere.

24 Q. And were you going straight to corporate from Rutledge?

25 A. Yes, it was our plan to go to corporate.

1 you said you were on your way to Lawson Park and then to
2 corporate headquarters.

3 THE WITNESS: Lawson Park is on the way to corporate,
4 yes.

5 JUDGE AMCHAN: Had you had a conversation with
6 Ms. Weaver before you left?

7 THE WITNESS: We had a conversation saying we were going
8 to meet at corporate.

9 Q. BY MS. GIVENS: Was there anything else mentioned in the
10 conversation about anything else?

11 A. Just that we were going to drive by Lawson Park, which
12 is on the way to corporate.

13 Q. Okay. Anything else that you guys talked about before
14 you took off?

15 A. I don't believe so.

16 Q. What, if any, discussion did you have before leaving for
17 Lawson Park and the corporate office about following company
18 vehicles?

19 A. We had no conversation of that.

20 Q. Had you ever talked to any of the other picketers about
21 the concept of following company vehicles?

22 A. No.

23 Q. Did you drive by the Park?

24 A. We did.

25 Q. Did you notice Brenda was behind you before or after the

1 Park?

2 A. Before the Park.

3 Q.' And did you stop to talk at the Park?

4 A. No, we just drove on by. There was no one there.

5 Q. Okay. And where did you go?

6 A. We drove up 14th Street to Marshall Avenue, and company
7 trucks pulled in front of us going north, the same direction
8 we were going, and it went to 1501 which is the office,
9 central office and --

10 Q. 1501 Charleston?

11 A. Charleston Avenue.

12 Q. Uh-huh.

13 A. And we followed them to that, and they pulled in the
14 Company parking lot, and we went on.

15 Q. Okay. And then where did you go?

16 A. Well, we stopped. The stop sign was at 15th and
17 Charleston.

18 Q. Okay. Who's in front? Who's behind?

19 A. I'm in front, and Brenda is behind me.

20 Q. In the right lane or the left lane?

21 A. It's just one lane going north.

22 Q. Okay. And so you're at 14th and Charleston?

23 A. No, I'm at 15th and Charleston.

24 Q. Okay. And the corporate office is where from 15th and
25 Charleston?

- 1 A. It's two blocks to the west.
- 2 Q. Okay. And you're facing north at this time?
- 3 A. Yes, I am.
- 4 Q. All right. And so to go to corporate, you would turn?
- 5 A. Left.
- 6 Q. And you turned right. Why?
- 7 A. There was a company truck that was going west on
- 8 Charleston.
- 9 Q. Which is Route 16?
- 10 A. Yes, it is, and I followed it.
- 11 Q. When did you see the truck? Where did the truck --
- 12 where was the truck?
- 13 A. Well, by the time that he went through the stop sign and
- 14 I could turn, he was several blocks ahead of me.
- 15 Q. Okay. Were you the first car at the light? Do you
- 16 remember?
- 17 A. I believe I was.
- 18 Q. Okay. And you turned right on Charleston.
- 19 A. Correct.
- 20 Q. Did you happen to notice at this time if Weaver was
- 21 following you?
- 22 A. She followed shortly after I turned, yes.
- 23 Q. Did you have any idea of whether or not -- what, if any,
- 24 knowledge did you have as to whether she would follow you?
- 25 A. I had no knowledge if she would follow me.

1 Q. So did the truck continue on west on Route 16
2 Charleston?
3 A. Yes, he did.
4 Q. Okay. Were there stoplights along the way?
5 A. There's several stop signs or stoplights on the way.
6 Q. Did you happen to have to stop at any of those lights?
7 A. Yes.
8 MR. LONERGAN: Objection. Leading.
9 JUDGE AMCHAN: Overruled. Are you going west or you're
10 going east?
11 MS. GIVENS: West.
12 JUDGE AMCHAN: All right.
13 THE WITNESS: No, we're going east, I'm sorry.
14 MS. GIVENS: Okay.
15 JUDGE AMCHAN: I'm mixed up myself.
16 Q. BY MS. GIVENS: So when you're at 15th and Charleston,
17 and you turn right, you're driving?
18 A. I'm going east.
19 Q. Okay. And when you're at 15th and Charleston and you
20 turn left to go to corporate, you're going?
21 A. West.
22 Q. And you turned?
23 A. East.
24 Q. Okay. Toward Highway 57?
25 A. Correct.

1 Q. Okay. And did you happen to see if the truck, the
2 Employer's truck got caught any lights?

3 A. I don't think he did or I would have caught up with him.

4 Q. Okay. Could you -- as you're driving -- you
5 eventually -- did you eventually catch up with him?

6 A. I did, as he was out of town.

7 Q. Okay. And tell us at what point you believe you caught
8 up with him?

9 A. At Loxa Road and Route 16.

10 Q. Okay. And about how long is it from 15th and Charleston
11 to Loxa Road?

12 A. Probably three miles, maybe a little more.

13 Q. Okay. Was there any point during that drive where you
14 lost sight of the truck?

15 A. Yes.

16 Q. And do you know where that was?

17 A. There's a little bit of a curve in the road, as it
18 leaves town, that you can't see around.

19 Q. Okay. And do you have to drive by the Cross County Mall
20 as you're going in that direction?

21 A. Yes, you do.

22 Q. Did you drive by the Cross County Mall?

23 A. Yes, I did.

24 Q. And if the Company says that you drove by a Consolidated
25 employee, would you know that to be true that you drove by a

1 Consolidated employee near the Cross Country Mall?

2 A. No.

3 MS. GIVENS: Is it County, Cross County Mall?

4 MR. LONERGAN: It's County.

5 JUDGE AMCHAN: Country, that's what it says on the
6 exhibit. It says Cross Country Mall on this map.

7 MS. GIVENS: Can we call it the mall? We're going to
8 call it the mall.

9 Q. BY MS. GIVENS: So do you have any recollection on
10 seeing anybody on eastbound Charleston, 16th, on this day
11 with a truck in front of you as you passed the Mall?

12 A. No.

13 Q. As you're driving eastbound on 16th behind the Company
14 truck, did you happen to notice whether or not Brenda Weaver
15 was behind you?

16 A. She was behind me.

17 Q. Okay. So you catch up to him at about Loxa Road you
18 said?

19 A. He got stopped by the stoplight at Loxa Road which
20 allowed me to catch up to him.

21 Q. Okay. What lane was he in?

22 A. He was in the right-hand lane.

23 Q. And where is Loxa Road in relation to Sarah Bush, if you
24 know?

25 A. Well, it's before you get to Sarah Bush.

- 1 Q. Let me show you what's been marked as GC-10(c). Can you
2 tell us where Lerna Road is on 10(c)?
- 3 A. I'm sorry. Did I say Loxa Road? I meant to say Lerna
4 Road.
- 5 Q. Okay.
- 6 A. Did I say it wrong?
- 7 Q. Where do you remember catching up to him?
- 8 A. I caught up to him at Lerna Road.
- 9 Q. Okay. And show us -- can you tell us where Lerna Road
10 is? Is the name of Lerna Road on this map?
- 11 A. It says on this map, it says 870 East.
- 12 Q. Okay. Is 870 -- is N County Road 870 East Lerna Road as
13 far as you know?
- 14 A. Yes.
- 15 Q. Okay. And so -- and are you sure about the Loxa/Lerna
16 thing?
- 17 A. Yeah, it's the Lerna Road, not the Loxa Road.
- 18 Q. Okay.
- 19 A. Sorry.
- 20 Q. That's okay. Is Lerna before or after Sarah Bush?
- 21 A. Lerna is before Sarah Bush.
- 22 Q. Okay. And so you catch up to him. You're all in the
23 right lane. The light turns green. Is there an Amoco
24 station at the corner of Lerna and 16th on your right?
- 25 A. After you pass Lerna Road there is one, yes.

1 Q. And a little road called Miller?

2 A. Yes.

3 Q. Yes, you heard of Miller Road?

4 A. Well, I did not know the name of it. It's the little
5 street that goes into the station.

6 Q. Okay. So you don't know if it's Miller Road or not?

7 A. No.

8 Q. Okay. Light turns green. Tell us what happens.

9 A. We both proceed through the stop sign. Actually, I'm
10 not quite to the stop sign yet. It turns green and he goes
11 through and I follow through.

12 Q. You were --

13 A. I wasn't quite there when the light turned green yet.

14 Q. Okay. And so then what?

15 A. We proceeded through the stop sign, and about the time
16 we get to the beginning of the airport --

17 Q. Uh-huh.

18 A. -- Brenda passes me.

19 Q. Do you have any idea why?

20 A. No, I don't.

21 Q. Okay. So she passed you. Where did she go?

22 A. She passed me and the Company truck, and she pulled back
23 into the right-hand lane.

24 Q. And could you -- what, if any, view did you have of her
25 after she pulled back in the right-hand lane?

1 A. I had to wait for some other traffic to pass, and then I
2 followed her around the Company truck and pulled in behind
3 her.

4 Q. At this point, where are you on the map?

5 A. Oh, we're probably almost to the stoplight at Sarah
6 Bush.

7 Q. Okay. So is that County Road 28, Loxa Road?

8 A. No, your map really doesn't give it a name, but it's
9 just the road that turns into Sarah Bush.

10 Q. Okay. And then what happened?

11 A. Well, she's driving ahead of me and I'm behind her, and
12 I looked in my rearview mirror, right about the Loxa Road,
13 the Company truck turned south.

14 Q. Okay. And what did you do?

15 A. Well, there was no reason for us to go any further. So
16 I pulled up on the side of the road with my turn signal on,
17 and we turned at that next road and came back to that, too.

18 Q. Did you -- did she follow you?

19 A. Yes, she did.

20 Q. Do you know why?

21 A. No. There was no reason to go any further.

22 Q. What, if anything -- was there anything from preventing
23 you from following him?

24 A. Well, he turned south. We couldn't go -- turn south.
25 We were ahead of him.

1 Q. Now, was there any way for you to get back there?

2 A. Well, we would have had to turn around -- no, not
3 really.

4 Q. When -- did you observe anything -- when Brenda passed
5 you, what, if anything, was the truck in front of you doing?

6 A. He was just driving, normal driving.

7 Q. In what lane?

8 A. He was in the right lane.

9 Q. Was there any point at which you recall him, when he was
10 in front of you, at any point trying to move into the left
11 lane?

12 A. No.

13 Q. Did Brenda Weaver -- do you recall if Brenda Weaver
14 honked?

15 A. No.

16 Q. You don't remember or you don't --

17 A. I don't -- I never heard her honk.

18 Q. Do you have any idea whether or not if she had, you
19 would have heard it?

20 A. Well, I would think I would have heard it, but I don't
21 remember hearing anything.

22 Q. Can you described when she passed, how close she was to
23 the Company truck?

24 A. How close?

25 Q. Yeah.

1 A. I mean just normal driving. She just passed him.

2 Q. Did you see her swerve?

3 A. No.

4 Q. Did you see her brake?

5 A. No.

6 Q. Did you have any view of how far it was that she passed
7 him before she got in the right-hand lane? Do you have any
8 idea about that?

9 A. Just normal driving. I mean she didn't cut him off.

10 Q. At any point after Brenda Weaver passed him, did you
11 observe whether or not the Company truck slowed down?

12 A. No.

13 Q. Did you observe when Brenda Weaver was in front of the
14 Company truck, any brake lights?

15 A. No.

16 Q. Do you know how close you got to the Company truck?

17 A. How close I got?

18 Q. Uh-huh.

19 A. I didn't swerve. I just passed him, and when it was
20 clear, I pulled back between the two of them.

21 Q. When you were behind the Company truck, do you know how
22 close you were?

23 A. A couple of car lengths.

24 Q. When you passed him, did you look at him?

25 A. No.

1 Q. How many years have you driven, been a driver?

2 A. Since I was 16.

3 Q. Do you have an understanding of what to cut someone off
4 means?

5 A. Yes.

6 Q. What do you think it is?

7 A. To cut in front of them where they would have to brake
8 and slow down.

9 Q. When you got in front of Mr. Conley, did you cut him
10 off?

11 A. No.

12 JUDGE AMCHAN: When did you know it was Mr. Conley?

13 THE WITNESS: After we got back to corporate.

14 JUDGE AMCHAN: But you're saying while you were driving,
15 you did not know, you did not know who the driver was?

16 THE WITNESS: No, I did not.

17 Q. BY MS. GIVENS: You know it was a company truck?

18 A. I did.

19 Q. And it was marked company truck?

20 A. Yes.

21 Q. Okay. And we've been calling it a marked company truck,
22 Mr. Conley's truck, because the Company's identified him?

23 A. Yes.

24 JUDGE AMCHAN: Did you know who Mr. Conley was before
25 December 10th?

1 THE WITNESS: I know him, yes.

2 Q. BY MS. GIVENS: Did you -- when you and Brenda got back
3 to corporate, what, if any, conversation did you have?

4 A. Not a lot of conversation. I'm sure we talked about it,
5 but I don't recall any details about it.

6 Q. Do you know what you said?

7 A. No.

8 Q. Do you have any recollection as to what she said?

9 A. No.

10 JUDGE AMCHAN: Well, when did you find out it was
11 Mr. Conley driving the truck and how?

12 THE WITNESS: I arrived, and she told me when we got
13 back to corporate. It was either then or when they gave me
14 the papers.

15 Q. BY MS. GIVENS: Who did you think was driving the truck?

16 A. Just a company employee.

17 Q. And did -- what was the reason you were following that
18 truck?

19 A. Well, if he had have went to a commercial site, we would
20 have reported that to the Union, and they might have set up
21 an ambulatory picket.

22 Q. So when you got back to corporate, what, if any,
23 conversation did you have with the Union about the Company
24 truck that you saw?

25 A. None.

1 Q. Why?

2 A. It didn't go to a -- well, we didn't -- he didn't go to
3 a commercial site. We lost him.

4 Q. Okay. Is that a commercial area out past Sarah Bush?

5 A. Yes.

6 Q. And this highway, you said he turned on Loxa. Are there
7 businesses to the right of Loxa?

8 A. To the right?

9 Q. I mean when he turned south on Loxa.

10 A. There's mostly residential down that way.

11 Q. Do you know who Larry Diggs is?

12 A. I've heard of the name.

13 Q. Had you ever heard of him before you were suspended and
14 discharged?

15 A. I've heard the name. I don't know him.

16 Q. Was there -- at any point before Mr. Conley turned off,
17 do you recall whether there was any point at which you pulled
18 beside Ms. Weaver's car for any reason?

19 A. No.

20 Q. At some point you received documents that contained
21 Troy Conley's version of these events?

22 A. Yes.

23 Q. Did you look at it?

24 A. Yes.

25 Q. Okay. And you know that he claims that you passed him

1 and paralleled the first vehicle and that you both slowed
2 down?

3 A. That's his statement, yes.

4 Q. Yeah. Is that true?

5 A. No.

6 Q. Why would he say that?

7 A. I don't know why he said it. It didn't happen.

8 Q. Well, then he said, I proceeded to pass with other
9 traffic. Did he ever pass you?

10 A. No.

11 Q. Did he ever pass Brenda Weaver?

12 A. No.

13 Q. And Pat Hudson cut in front of me slowing down. Did
14 that happen?

15 A. No.

16 Q. And he says that created a blockade to the front. So I
17 guess at this time you're in front, and I'm not sure, did
18 that happen?

19 A. No.

20 Q. Did you and Brenda engage in a rolling blockade?

21 A. No.

22 Q. After several miles, I turned south on County Road.
23 When you got back to corporate, was there a time that you
24 decided to take a drive somewhere else?

25 A. Yes.

1 you testified?

2 A. Yes, we were going to meet at corporate.

3 Q. Why did you take two cars?

4 A. Well, we didn't know where we was going to end up,
5 whether we would come back to Rutledge or where we was going
6 to go, so we took separate vehicles.

7 Q. Did you discuss going in just one person's car?

8 A. I don't think we discussed it. We just assumed that we
9 didn't know where we were going and took separate vehicles.

10 Q. Okay. When you saw the Company truck on Charleston
11 heading east, where were you the first time?

12 A. 15th and Charleston.

13 Q. So the entire time between Charleston Avenue and 15th
14 Street and Lerna Road, you and Weaver were behind the driver
15 of the ICT truck. Is that correct?

16 A. We were behind, yes.

17 Q. Okay. And Weaver then eventually passed the ICT truck
18 and got parallel. Is that right?

19 A. At one time she was parallel, but not for very long.

20 Q. But you would describe her as being parallel with the
21 ICT truck, right?

22 A. Just long enough to pass it.

23 Q. Is that an accurate description? Weaver passed you on
24 the left and got parallel with the ICT truck?

25 A. Yeah.

1 Q. And there were a lot of commercial properties going down
2 16 going into Charleston, right?

3 A. Yes.

4 Q. Okay. So you could kind of assume maybe that's where he
5 was going. Is that right?

6 A. I assumed he was going to the city of Charleston.

7 Q. Right. Where there are a lot of commercial properties.

8 A. Yes.

9 Q. Okay. So -- and that was your intent from the time you
10 picked him up at 15th and Charleston?

11 A. That was my intent, yes.

12 Q. Okay. So how are you going to follow him if you get in
13 front of him?

14 A. Well, I didn't know what her intentions were. So I
15 followed her.

16 Q. But following Conley was your idea.

17 A. Yes, it was.

18 Q. Okay. So it was your idea to follow Conley.

19 A. Yes.

20 Q. Weaver for a period of time was parallel, whatever time,
21 however long that took. Weaver's in front of him. So now
22 you're following Conley just like your intention was?

23 A. Yes.

24 Q. So why pass him?

25 A. I was --

1 MR. GRANT: Objection. Asked and answered.

2 JUDGE AMCHAN: Well, she did answer that. I mean she's
3 explained that.

4 Q. BY MR. LONERGAN: Did you give up your idea then to
5 follow Conley at that time?

6 A. Yes, I wanted to stay with Brenda.

7 Q. So you changed your mind and no longer wanted to follow
8 him?

9 A. Yes.

10 Q. What caused to make the change in decision after you
11 followed him --

12 A. Because she went around and I wanted to stay with her.

13 Q. But she wasn't -- she was just following you. She
14 didn't make a decision to follow Conley?

15 A. Well, I don't know what her intentions were. I don't
16 have her mindset, but when she passed me, I wanted to stay
17 with her.

18 Q. Okay. And decided no longer to follow Conley?

19 A. I wanted to stay with Brenda. I didn't know what her
20 intentions were.

21 Q. Did the passing of the ICT truck happen immediately once
22 you decided you wanted to pass?

23 A. I had passed him immediately. I mean after the cars. I
24 didn't stop beside him if that's what you're asking. I just
25 went around him, normal pass.

- 1 Q. I'm sorry. You pulled to pass and you were going the
2 speed limit. Is that right?
- 3 A. That's correct.
- 4 Q. In a very short period of time, you don't remember how
5 long, you looked in your mirror, rearview mirror and saw
6 there was a truck. Is that right?
- 7 A. There was another vehicle behind me, you mean?
- 8 Q. Yes. Is that correct?
- 9 A. Yes, that's correct.
- 10 Q. Okay. And there was just one vehicle behind you?
- 11 A. My recollection, yes.
- 12 Q. Okay. And then you pulled in front of Conley.
- 13 A. And I pulled over into the right-hand lane.
- 14 Q. Directly in front of Conley?
- 15 A. No. I mean there was room for me to enter there.
- 16 Q. Okay. But you pulled -- Conley was the closest car to
17 you from the back?
- 18 A. Yes.
- 19 Q. I mean you pulled into --
- 20 A. I went between him and Brenda.
- 21 Q. Okay. Thank you. I think you said in your direct
22 testimony about an Amoco station. Is that a BP station?
- 23 A. I believe so, yes.
- 24 Q. Okay. And that's the one on the way on this journey
25 that you had on 16. Is that correct?

- 1 A. That's correct.
- 2 Q. And then please recount the conversation. You get
- 3 back -- you don't have a cell phone, right?
- 4 A. That is correct.
- 5 Q. And you get back to corporate.
- 6 A. Yes.
- 7 Q. You go directly back to the corporate building after
- 8 Conley turned to the right.
- 9 A. Yes.
- 10 Q. Then you said it really wasn't convenient for you to
- 11 follow Conley?
- 12 A. You can't -- no, you cannot turn around on that road at
- 13 all.
- 14 Q. Okay. And you went back to corporate then?
- 15 A. I went back to corporate.
- 16 Q. Okay. And did you have a conversation with anybody?
- 17 Just tell me what happened once you got back to corporate?
- 18 A. I got back, and I talked to Janece Neunaber first. It
- 19 was cold that day, and she had lost her earmuffs and we had
- 20 taken a walk down to 15th Street to look for them. Brenda
- 21 had gotten there by that time, and she walked with us down
- 22 there and back.
- 23 Q. Okay.
- 24 A. We didn't talk about anything in particular except the
- 25 weather pretty much.

1 Q. And so my question is, before you decided to pass

2 Conley, had you seen the cars behind Brenda Weaver?

3 A. The cars were not behind Brenda. She had already pulled
4 in and the cars went on, and then I passed.

5 Q. So did you ever at any point form any opinion about
6 traffic backing up at any point on Route 16?

7 A. No.

8 Q. What are Sarah Greider's initials?

9 A. SG.

10 Q. Okay. Do you know her middle name?

11 A. No.

12 Q. Did the Company hire replacement workers to do your job?

13 A. I have heard rumors they did, yes.

14 Q. When did you hear those rumors?

15 A. After I was terminated. It was, I don't know, a few
16 weeks.

17 Q. So on December 10th, did you have any knowledge or
18 belief about whether or not there were people crossing the
19 picket line to do your work?

20 A. No.

21 Q. When you were pushed by the guard, the guard that came
22 up to you, that talked to you about that incident, was it the
23 same day or the next day?

24 A. I believe it was the next day.

25 Q. What did he say?

1 Q. Did you see any other cars cutting him off?

2 A. No.

3 Q. And at any point in that process, do you recall him
4 putting on his brakes or appearing to speed up? Do you
5 recall either?

6 A. No.

7 Q. Have you ever driven in congested traffic?

8 A. Yes.

9 Q. Do you have an opinion as to whether two cars is
10 congested traffic?

11 A. I would say no.

12 Q. When you pulled in front of Troy Conley, do you have any
13 idea how close you were to the front of that truck?

14 A. A car length.

15 Q. Did you put on your brakes when you got in front of him?

16 A. No.

17 Q. Do you have an opinion as to whether you intimidated,
18 blocked, impeded Mr. Conley?

19 A. I did not.

20 Q. What about Sarah Greider?

21 A. I don't recall the incident. So I'd say no.

22 Q. Okay. And Kurt Rankin said you swerved in front of him.
23 Is he lying about that?

24 A. Yes. I don't remember swerving in front of him.

25 Q. Okay. Do you know if Kurt Rankin is a liar?

1 Q. Or speed?

2 A. No.

3 Q. Okay.

4 MR. GRANT: Nothing further.

5 JUDGE AMCHAN: Do you have anything else?

6 MR. LONERGAN: Just very briefly.

7 RECROSS-EXAMINATION

8 Q. BY MR. LONERGAN: Were you driving the speed limit the
9 whole time?

10 A. Yes.

11 Q. Okay. And did you know that when Weaver passed Conley,
12 she looked over to the side to try to figure out who was
13 driving?

14 A. I don't know that, no.

15 Q. Okay. Are you saying that she took about the same
16 amount of time when she was parallel with him as you did, I
17 think you said two seconds for both?

18 A. I didn't notice her do anything different than I did.

19 Q. Okay. The cars that you testified passed Conley, did
20 they also pass Weaver --

21 A. Yes.

22 Q. -- before they went to the right lane or did --

23 A. Yes.

24 Q. So nobody came in between Weaver and Conley until you
25 did?

1 A. Correct.

2 Q. You knew, didn't you, that management people and people
3 outside the bargaining unit and people from other locations
4 were performing bargaining unit work during the strike,
5 didn't you?

6 A. I would assume so, yes.

7 JUDGE AMCHAN: The Reporter I thought had to leave at
8 12:00, and I'm just --

9 MR. LONERGAN: I know.

10 JUDGE AMCHAN: You're done?

11 MR. LONERGAN: I'm done.

12 MS. GIVENS: We're done.

13 MR. GRANT: I'm done.

14 (Witness excused.)

15 JUDGE AMCHAN: Okay. Off the record.

16 (Whereupon, a lunch recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 JUDGE AMCHAN: Back on the record.

3 So have you rested?

4 MS. GIVENS: General Counsel has no other witnesses in
5 its primary case, and we rest.

6 MR. DUMBACHER: The Employer will call Troy Conley.

7 (Whereupon,

8 TROY CONLEY

9 was called as a witness by and on behalf of the Respondent
10 and, having been first duly sworn, was examined and testified
11 as follows:)

12 DIRECT EXAMINATION

13 Q. BY MR. DUMBACHER: Mr. Conley, how are you today?

14 A. Fine. Thank you.

15 Q. Who are you employed by?

16 A. Consolidated Communications, Inc.

17 Q. What's your position with Consolidated?

18 A. Director of Network Engineering.

19 Q. Were you in that position in December of 2012?

20 A. Yes, I was.

21 Q. Where were you based?

22 A. Out of the Mattoon location.

23 Q. And that's, is that a corporate office?

24 A. It's actually the central office.

25 Q. What's the address?

1 A. 1501 Charleston Avenue.

2 Q. And that's where you worked in December of 2012, as
3 well?

4 A. It is.

5 Q. What were your general job duties?

6 A. I'm responsible for the overseeing of the engineering
7 team for network design and architecture.

8 Q. Do you recall working on Monday, December 10?

9 A. I do.

10 Q. Do you recall that there was a union strike during that
11 time?

12 A. Yes.

13 Q. Where did you report to that morning?

14 A. I started out that morning at our central command
15 center, which is the Rutledge building, and then proceeded to
16 the central office, and at that point got my first job
17 assignment, and then proceeded to the first job site.

18 Q. Let's step back. What were your job duties that day?

19 A. I was running general maintenance and trouble.

20 Q. What does that mean?

21 A. It could be a myriad of different things, but typically
22 for different types of circuits that are down, inoperative,
23 customers call in. We get the tickets for those, get out and
24 repair those.

25 MR. DUMBACHER: Okay.

1 JUDGE AMCHAN: Would you normally be doing that if there
2 had not been a strike?

3 THE WITNESS: That is not my job function. That is a
4 central office technician job.

5 Q. BY MR. DUMBACHER: Did you have a partner that day?

6 A. I did.

7 Q. Who was that?

8 A. Larry Diggs.

9 Q. Who is Larry Diggs?

10 A. He is a central office manager out of the Lufkin, Texas
11 location.

12 Q. How do you know Mr. Diggs?

13 A. I met Mr. Diggs probably in 2006 when the Company had
14 acquired, shortly after the Company acquired the Texas
15 property; I think I was in Texas, and just a casual
16 introduction at that time.

17 Q. What was your first assignment that morning?

18 A. We were assigned a case of trouble at a wireless tower
19 in Charleston.

20 Q. And probably a dumb question, is that a commercial site?

21 A. Yes.

22 Q. Not a residential site?

23 A. No, it's not.

24 Q. Did you drive there?

25 A. I did.

1 Q. What type of vehicle were you in?

2 A. I was driving a four-wheel drive Chevy truck.

3 Q. Was that a vehicle provided by the Company?

4 A. It was.

5 Q. Does that vehicle, does it require a commercial driver's
6 license?

7 A. It does not.

8 Q. Do you have a commercial driver's license?

9 A. I do not.

10 JUDGE AMCHAN: Was the vehicle, was it one of the white
11 trucks?

12 THE WITNESS: The white truck with "Consolidated
13 Communications."

14 JUDGE AMCHAN: Who gave you the assignment?

15 THE WITNESS: Kevin Swan, the central office manager for
16 the Illinois location.

17 JUDGE AMCHAN: He normally would be giving you
18 assignments, am I correct?

19 THE WITNESS: Yes. He would give the assignments to the
20 normal technician working the job. Yes.

21 Q. BY MR. DUMBACHER: Do you know Brenda Weaver?

22 A. I do.

23 Q. How do you know Brenda Weaver?

24 A. I've known her through the years of being in the
25 Company. She's held several positions. Her last position,

1 she was the admin greeter in our corporate building.

2 Q. Do you know what she looks like?

3 A. I do.

4 Q. Do you know Pat Hudson?

5 A. I do know Pat. I've known Pat for years. She was over
6 our fleet department. Anytime I needed to get a fleet car
7 for travel, I'd go through Pat to do that.

8 Q. Did you see Ms. Weaver and Ms. Hudson on the morning of
9 December 10?

10 A. I did.

11 Q. Where did you see them?

12 A. I saw them on my route on Highway 16 when I was
13 proceeding to my first job.

14 Q. Where was the first job located?

15 A. It was in Charleston.

16 Q. Okay. Was it off of Highway 16?

17 A. It was. Yes.

18 Q. Approximately how far off the highway was it?

19 A. Probably I'd guesstimate maybe half a mile, maybe.

20 Q. Knowing it's been nine months, to the best of your
21 recollection, who did you see first that morning?

22 A. I saw Brenda.

23 Q. Where were you when you saw her?

24 A. I was proceeding east on Route 16 towards the first job.
25 That BP station, gas stations that sits on 16, I had just

1 passed that station.

2 Q. Okay. If you'll look at Joint Exhibit 9(a), which I
3 believe you should have up there. Do you see what I'm
4 talking about?

5 A. I do.

6 Q. It's a two-page stapled document. There's an (a) and a
7 (b). Do you see that?

8 A. Yes.

9 Q. On the first page, which is labeled (a), do you see a BP
10 gas station in the bottom left-hand corner?

11 A. I do.

12 Q. Yes.

13 A. I do. Yes.

14 Q. Okay. And you said you saw it was Ms. Weaver first?

15 A. Yes.

16 Q. Okay. And about, and you said it was before or after
17 that BP gas station?

18 A. It was right after the BP station.

19 Q. Okay. What did you see Ms. Weaver do?

20 A. Well, as it began, I heard honking, and I was not sure
21 where the honking was coming from. A car had proceeded up in
22 the left lane besides me and I looked over. It was
23 Brenda Weaver. There was a picket sign in the passenger side
24 of the car. She proceeded around me, signaled, and got over
25 in the right lane in front of me.

1 Q. You were in the right lane?

2 A. I was in the right lane. Yes.

3 Q. And Ms. Weaver passed you on the left lane and then
4 pulled in front of you on the right lane?

5 A. Yes.

6 Q. It's a two-lane road each way?

7 A. Yes.

8 Q. Okay. Did you then see Ms. Hudson?

9 A. I did.

10 Q. Tell me what you saw Ms. Hudson do.

11 A. Ms. Hudson came in the left lane, passed me, proceeded
12 parallel to Brenda.

13 Q. And Ms. Weaver was in the right lane?

14 A. Yes, she was. So they were parallel right and left
15 lane, side by side. I saw some hand motioning going on by
16 Pat, and they immediately slowed both cars down.

17 Q. You were behind both cars at this point?

18 A. I was. I was in the right lane behind Brenda.

19 Q. And Ms. Hudson was?

20 A. In the left lane.

21 Q. Running approximately parallel?

22 A. Yes.

23 Q. To Ms. Weaver?

24 A. Yes.

25 Q. Okay. Did that continue for a period of time?

1 A. It did.

2 Q. Okay. Did you do anything in response?

3 A. I slowed down, and I signaled, went into the left lane
4 behind Pat Hudson to see if she would let me pass. She did
5 not, proceeded forward and let me pass, so I signaled back
6 into the right lane behind Brenda.

7 Q. Did you go into the right lane behind Ms. Weaver?

8 A. I did. Yes.

9 Q. Okay. What happened then?

10 A. At that point cars had started coming up behind us in
11 the flow of traffic, and Pat proceeded forward in front of
12 Brenda, pulled into the right-hand lane in front of Brenda.
13 The three cars started passing. I signaled left and went
14 into the left lane behind the third car. As I got up to
15 Brenda after the last of the front car got beyond me, Pat cut
16 me off and slowed down again.

17 Q. Pat cut you off in the left lane?

18 A. Yes.

19 Q. Just so I understand, you were attempting to pass both
20 Ms. Hudson and Ms. Weaver?

21 A. Correct.

22 Q. I think you used the words Pat cut you off?

23 A. Yes.

24 Q. Do you believe it was intentional?

25 A. Absolutely.

1 MR. GRANT: Objection.

2 JUDGE AMCHAN: Overruled. He answered.

3 Q. BY MR. DUMBACHER: What did you do at that point?

4 A. Well, obviously I slowed back down. They slowed
5 traffic. So I slowed down appropriately, and I signaled and
6 got back in the right lane behind Brenda.

7 Q. And at that point was Ms. Hudson still in the left lane?

8 A. She was.

9 Q. Did you turn off of 16 at some point?

10 A. I did.

11 Q. Do you remember to the right or to the left?

12 A. I turned off to the right going south.

13 Q. And you were in the right lane? You made a right turn?

14 A. Yes.

15 Q. Onto a road that was going south?

16 A. Yes.

17 Q. And what road was that?

18 A. I believe that's 1200 East.

19 Q. Okay. If you'll look back at Joint Exhibits 9(a) and
20 9(b), turn to (b), the second page, can you identify which
21 road you turned onto?

22 A. Yes, I can.

23 Q. Which road is that?

24 A. It's the road that's about three quarters across the
25 page past the Loxa Road.

1 Q. Is there a yellow pin?

2 A. There is. It says, "Troy turnoff point."

3 Q. Is that where you turned right?

4 A. It is. Yes.

5 Q. Was that the most direct route to the commercial site
6 you were visiting?

7 A. It was not.

8 Q. What would have been the most direct route?

9 A. I would have continued onto 16 into Charleston.

10 Q. Why did you turn to the right then if that wasn't the
11 most direct route?

12 A. At that point, obviously I had traveled several miles
13 and was feeling very harassed. It was very frustrating, and
14 I was trying to avoid conflict, so I thought I'd avoid the
15 situation entirely and turn off and take an alternate route.
16 (Respondent's Exhibit 6 marked for identification.)

17 Q. BY MR. DUMBACHER: I'm going to show you what's been
18 marked Employer's Exhibit 6. It appears to be a Google Maps
19 of a portion of 16. Does that look correct to you?

20 A. It does.

21 Q. Do you know what the red represents on this image?

22 A. It looks like the path I was driving that day.

23 Q. Do you believe that to be the path you did drive on the
24 way to the commercial site?

25 A. Other than from the turnoff point to the yellow tack in

1 Q. Okay. Super. Did you see work out in the field the
2 rest of that day?

3 A. I believe I did.

4 Q. And in the Charleston/Mattoon area?

5 A. Yes.

6 MR. DUMBACHER: Okay.

7 JUDGE AMCHAN: Do you want to move for admission of
8 Employer's Exhibit 6?

9 MR. DUMBACHER: Yes, I do.

10 MS. GIVENS: No objection.

11 MR. GRANT: I would object. I'm not sure to the
12 relevance, but --

13 Q. BY MR. DUMBACHER: Did you report your encounter with
14 Ms. Hudson and Ms. Weaver to anybody?

15 A. I did.

16 Q. Who?

17 A. I believe I talked to Sam Jurka in the command center.

18 Q. Was it an in-person conversation?

19 A. Yes.

20 Q. Do you recall when that conversation took place?

21 A. Sometime after the incident.

22 JUDGE AMCHAN: Was it that day?

23 MR. CONLEY: It was that day when I called it in. Yes.

24 Q. BY MR. DUMBACHER: Did you talk to him in person, or did
25 you call it in?

1 A. I called it in.

2 Q. Did you talk to him on the phone?

3 A. Yes.

4 Q. Do you remember talking to anybody else about the

5 incident?

6 A. I talked to several people.

7 Q. Okay. Did you talk to anybody else in management?

8 A. Ryan and I had a conversation about it. I did talk with

9 one of our admins that was in the command center at the time.

10 MS. GIVENS: Who?

11 THE WITNESS: One of the admins that was in the command

12 center.

13 MS. GIVENS: What's an admin?

14 THE WITNESS: Administration. Secretary.

15 Administrative assistant.

16 Q. BY MR. DUMBACHER: Did you fill out any written report

17 of the incident?

18 A. Can you repeat that?

19 Q. Did you fill out a written report of the incident?

20 A. I did.

21 (Respondent's Exhibit 7 marked for identification.)

22 Q. BY MR. DUMBACHER: I'm going to show you what's been

23 marked Employer Exhibit No. 7. Have you seen this document

24 before?

25 A. I have.

1 to see if I can get a stipulation as to the distance between
2 Miller Road and County Road 1200 East.

3 JUDGE AMCHAN: Okay.

4 (Off the record.)

5 JUDGE AMCHAN: Back on the record.

6 MS. GIVENS: I offer the following stipulation that from
7 16 going east from the BP station at about Miller and 16 to
8 Highway 16 and County Road 1200 East is approximately three
9 miles.

10 MR. LONERGAN: Accepted.

11 Q. BY MS. GIVENS: Okay. And so the first time that you
12 saw Weaver was anywhere from a quarter to a half a mile east
13 of Miller Road, correct?

14 A. I would guess that. Less than.

15 Q. Less than what?

16 A. Less than a half a mile.

17 Q. Okay. You said at most a half mile?

18 A. Yes.

19 Q. Okay. Okay. And she passes you; as she passes you, you
20 look down and you see her picket sign in her passenger seat,
21 right?

22 A. I did.

23 Q. Are you able to see her eyes?

24 A. I did. Yes.

25 Q. And she looked at you?

1 THE WITNESS: No.

2 Q. BY MS. GIVENS: Why did you testify that she signaled
3 and now you are saying you don't know if she signaled?

4 A. When I made that statement, I made an assumption that
5 she signaled. I can't say that I saw her turn on her signal.

6 Q. Okay. In any event, she proceeded in front of you at a
7 safe distance, right?

8 A. I would say that she probably did.

9 Q. She didn't get in front of you and slam on her brakes?

10 A. No.

11 Q. And she didn't try to swerve into you?

12 A. No.

13 Q. Okay. So then at the time that Brenda Weaver pulls in
14 front of you, do you see any car behind you?

15 A. I did not.

16 Q. Okay. And so how long was Brenda Weaver's in front of
17 you before you noticed another car?

18 A. Not very long.

19 Q. About what period of time?

20 A. I'd say probably less than a minute.

21 Q. And so I think here's what I'm really asking; there
22 weren't two cars passing you, correct?

23 A. No. No.

24 Q. So Brenda Weaver passes you, and up to a minute later
25 you see Pat Hudson's car, what turns out to be Pat Hudson's

1 car, yes?

2 A. At some point in time. I'm not going to designate what
3 time, but, yes, Pat did pass me.

4 Q. You said up to a minute later?

5 A. I said it could have been up to a minute.

6 Q. So it could have been up to a minute later?

7 A. Yes.

8 Q. It was not immediate?

9 A. They weren't right behind each other. No.

10 Q. If they testified that there were cars that passed you
11 and Brenda in between Pat Hudson passing you, would you know
12 that to be incorrect?

13 A. I'm sorry. Can you repeat that?

14 Q. Yes. Pat Hudson and Brenda Weaver seemed to think that
15 some cars passed you between Brenda passing you and Pat
16 passing you. Do you have any idea whether that's correct or
17 not?

18 A. I believe that to be incorrect.

19 Q. Okay. You believe that to be incorrect. You didn't see
20 any cars?

21 A. Not that I recall.

22 MS. GIVENS: Okay.

23 JUDGE AMCHAN: I'm kind of confused. I thought you said
24 you saw -- okay, so Weaver passes you and pulls to the right.
25 Then I thought there was some testimony that you saw another

1 car.

2 THE WITNESS: No. My testimony was that Pat Hudson came
3 up besides me, passed me, got parallel, they slowed down. I
4 got over in the left lane to pass. She didn't let me pass.
5 I went back into the right lane. Three more cars came up
6 behind us and got behind Pat. She pulled forward in front of
7 Brenda Weaver. Those three cars passed. I came in behind
8 the last car in that string, and when I got up close or
9 parallel with Brenda, Pat cut in front of me and came back
10 and slowed down.

11 Q. BY MS. GIVENS: Okay. So Brenda has passed you, Pat
12 pulled around?

13 A. Uh-hum.

14 Q. Are we now at about Loxa Road?

15 A. Oh, no.

16 Q. No?

17 A. No.

18 Q. Okay. The approximate distance between Miller and Loxa
19 is two miles, okay. So about how long did the procedure take
20 for Brenda to pass safely in front of you? She wasn't
21 speeding, was she?

22 A. I can't say. I don't know what the speed was at the
23 time.

24 Q. You don't recollect observing that she was traveling at
25 an excessive rate of speed, do you?

1 A. I don't recollect what she was traveling. No.

2 Q. You don't remember thinking to yourself or observing

3 your speed that she was speeding?

4 A. I didn't look at my speed at the time.

5 Q. Was Brenda Weaver speeding that you know of?

6 A. I can't say that she was. I can't say that she wasn't.

7 Q. Okay. Were you speeding?

8 A. At the time I don't know.

9 Q. Okay. So if the procedure starts within a quarter to a
10 half a mile after Miller Road, how long does it take for
11 Brenda to pass you and safely get in front of you, and Pat up
12 to a minute later to come up beside you and pass and pull
13 parallel to Brenda Weaver?

14 A. From a mileage standpoint?

15 Q. Yes. Can you please look at General Counsel's Exhibit
16 10(c) and tell me where you think you were?

17 A. I would say it was somewhere between, and it's hard to
18 judge on your 10(c) exhibit the mileage, but it's probably
19 between the occurrence happened somewhere between Miller Road
20 and there's a 16 designated on there for Highway 16; I'd say
21 it happened somewhere up in there.

22 MS. GIVENS: Okay.

23 MR. LONERGAN: For clarity, are you talking about the
24 number 16.

25 THE WITNESS: The number 16. Yes.

1 Q. BY MS. GIVENS: On Google Maps that's the distance of a
2 mile, so you think that this all happened, and she were in
3 front of you running parallel all within a mile of Miller
4 Road?

5 A. Like I said, I can't say what the exact distances or
6 times were.

7 Q. So it could have been as far as what, Sarah Bush? Is
8 that possible?

9 A. I don't think it was Sarah Bush. The reason I say that
10 is because I made the comment I had tried to get in the left
11 passing lane, and she didn't let me pass, and that happened
12 prior to the Sarah Bush Road going north.

13 Q. Okay. Now, wasn't that Loxa Road that that happened by?

14 A. I'm sorry, that what happened by?

15 Q. That you claimed that you tried to get over to the left?

16 A. No. That was prior to the hospital.

17 Q. Okay. And so who's motioning with their hands?

18 A. That was Pat.

19 Q. Okay. And so she's in front of you all the way to the
20 left, and you see her do what with her hand?

21 A. Making general motions. Her head was turned towards
22 Brenda.

23 Q. And you saw Brenda do what?

24 A. I didn't look a lot at Brenda. I was watching Pat.

25 Q. Okay. And at this point are you a safe distance behind

1 them?

2 A. I was.

3 Q. You are traveling safe, yes?

4 A. Sure.

5 Q. Okay. And they are traveling the speed limit, yes?

6 A. I can't tell you.

7 MR. LONERGAN: Objection, she's asked that at least five
8 times.

9 Q. BY MS. GIVENS: We're at a different point.

10 A. I don't know what speed I was traveling, or what speed
11 they were traveling.

12 Q. Were you all traveling about the same speed you had been
13 the whole time?

14 A. They slowed down once -- the motion occurred whatever
15 speed we were traveling; I significantly slowed down.

16 Q. Okay. And you didn't have to slam on your brakes, did
17 you?

18 A. I might have tapped my brakes. I wouldn't say I slammed
19 my brakes.

20 Q. You say you might have. You don't remember?

21 A. I don't remember.

22 Q. So you could have simply let off the accelerator,
23 correct?

24 A. I could have.

25 Q. Okay. So they did not try to cause an accident, as far

1 as you observed, correct?

2 A. I don't know that they intentionally tried to cause an
3 accident. No.

4 Q. Okay. So you might not even have had to slow down,
5 right?

6 A. I did slow down.

7 Q. But you don't know that you put on your brakes, right?

8 A. I don't know that I put on my brakes.

9 Q. So now you said that they ran parallel for a while. If
10 they were parallel in front of you at Sarah Bush, so, okay,
11 if you don't know when they slowed down, do you remember
12 observing whether or not --

13 A. I think I said they slowed down prior to the airport
14 entrance.

15 Q. Okay. Prior to the airport entrance?

16 A. Yes.

17 Q. And the airport entrance is what?

18 A. You see a small road it looks like on your Exhibit
19 10(c), you see the airport sign?

20 Q. Yes, I do.

21 A. There's a little gray, that's the airport entrance.

22 Q. Where it says "Coles County Memorial Airport"?

23 A. Yes. All this occurred prior to that point.

24 Q. Okay. So when they were parallel in front of you, you
25 have no idea what speed they were going?

- 1 A. I don't.
- 2 Q. Okay. And you have no idea what speed you were going?
- 3 A. I didn't.
- 4 Q. So, in fact, when they pulled in front of you and slowed
- 5 down, they could have been traveling the speed limit,
- 6 correct?
- 7 A. I don't know what speed they were traveling.
- 8 Q. When they pulled in front of you?
- 9 A. Could they have been.
- 10 Q. Yes?
- 11 A. Since I didn't know the speed limit, surely.
- 12 Q. So they could have been driving the speed limit in front
- 13 of you?
- 14 A. Yes.
- 15 Q. Now, let me ask you something. If they are in front of
- 16 you driving the speed limit -- which they may have been,
- 17 because you don't remember that they were going below the
- 18 speed limit, right? You don't remember they were traveling
- 19 below the speed limit?
- 20 A. Right.
- 21 Q. So they are in front of you traveling at least --
- 22 because you don't remember they traveled below the speed
- 23 limit, they are traveling at least the speed limit, why do
- 24 you need to get around them?
- 25 A. Why did I need to get around them?

1 Q. Yes?

2 A. I believed at the time we had slowed down so
3 significantly we were moving slower than what my normal speed
4 was.

5 Q. You just told us you didn't recall what speed you were
6 driving?

7 A. I just said I slowed down from the speed I was normally
8 traveling. I didn't say what speed that was.

9 Q. So my question is, if it's true that you don't remember
10 them traveling below the speed limit, why is it that you need
11 to pass them then?

12 A. I was going, like I said, I was going slower than what I
13 had been. In addition, there were other cars that were
14 coming up traveling, so the flow of traffic was faster than
15 what they were traveling.

16 Q. The flow of traffic in the right-hand lane wasn't
17 necessarily faster, was it?

18 A. No.

19 Q. You didn't testify that you had anybody on your bumper?

20 A. I'll say if I was the flow of traffic at the time, it
21 slowed me down from what speed I was traveling at.

22 Q. Right. Okay. So you must have been exceeding the speed
23 limit then?

24 A. You can't say that because I don't know what speed they
25 were traveling.

1 Q. Exactly, and you don't know that they were traveling
2 below the speed limit?

3 A. All I said is I was traveling whatever my flow of speed
4 was.

5 JUDGE AMCHAN: Be careful to let him before you start
6 talking. Let him finish.

7 Q. BY MS. GIVENS: All right. If I told you that the GPS
8 reports that at some point on this road you were traveling 69
9 miles an hour, would you have any reason to dispute that?

10 A. I would be surprised that the GPS read that I was
11 traveling 69. Do you know what lane I was in when I was
12 traveling that speed?

13 Q. No, but I think that the Company and the Union and the
14 General Counsel believe that the GPS information shows you
15 traveling 69 miles an hour.

16 A. Okay.

17 JUDGE AMCHAN: What's the speed limit on 16?

18 THE WITNESS: It's 55.

19 Q. BY MS. GIVENS: So is it possible that your real
20 frustration was that you were unable to travel at an
21 excessive rate of speed? Is it possible that that was your
22 frustration?

23 A. No.

24 Q. So, if they are not traveling below the speed limit,
25 that means they were traveling at least the speed limit, and

1 here's what I don't understand. If they were traveling at
2 least the speed limit, why were you not able to wait to see
3 what happened?

4 A. Back to my comment earlier, I don't know what the speed
5 limit was. I know I was traveling at a speed.

6 Q. You know what the speed limit is?

7 A. I don't know what my speed was. I know it's
8 55. I don't know what I was traveling. If I was traveling
9 at 69, all of a sudden I slowed down to 55. I just changed
10 my flow, and obviously not knowing what speed I thought I was
11 traveling, it seemed very slow to me.

12 Q. Okay. So at what point -- so you were going to get into
13 the fast lane and try to force Pat Hudson to speed up?

14 A. No.

15 Q. Why did you get in the fast lane then?

16 A. It seemed to me at that time they had slowed down
17 significantly compared to my speed, so if I proceeded into
18 the passing lane, Pat would see that I wanted to pass, and
19 she would potentially move out of the way and let me pass.

20 Q. At this point you weren't playing games with them?

21 A. I was not.

22 Q. So on the map, where are we at this point on GC-10?

23 A. According to what was the last conversation.

24 Q. You are in the left-hand lane hoping that Pat Hudson is
25 going to pass?

1 A. I think it was somewhere prior to the airport exit road
2 like we mentioned earlier.

3 Q. That you pulled into the left lane?

4 A. That I was in the left lane.

5 Q. Okay. And how long did you travel in the left lane
6 hoping that Pat was going to get out of your way?

7 A. I don't recall the time. Long enough to determine that
8 she wasn't going to proceed out of the way and let me pass.

9 Q. How did you let her know you wanted to proceed out of
10 your way?

11 A. I didn't honk or do anything. I just pulled in behind
12 her at a safe distance and traveled there for a period of
13 time and transitioned back into the lane.

14 Q. At what point did you get back into the right lane?

15 A. From the map standpoint?

16 Q. Yes.

17 A. It was somewhere prior I believe to the airport exit
18 road, I'm sorry, the hospital exit road.

19 Q. Okay. All right. So are we at Loxa Road yet?

20 A. We're not quite to Loxa Road yet.

21 Q. So you get back into the slow lane behind Weaver?

22 A. Yes.

23 Q. Okay. Frustrated?

24 A. Feeling very harassed at that point.

25 Q. I asked you were you frustrated?

1 A. I don't recall my feelings of frustration at the time.

2 I probably was frustrated at that point. Yes.

3 Q. Okay. Why did you need to speed past them?

4 A. I didn't feel like I was speeding past them. I felt
5 like I was keeping up with the flow of traffic. Obviously
6 three other cars made that attempt to pass, too.

7 Q. I thought it was two cars?

8 A. Three.

9 Q. Okay. But at this point still there's nobody backing up
10 behind you?

11 A. That, I don't know.

12 Q. Okay. And so how long did that go on from when you
13 pulled back in the right lane behind Weaver was where?

14 A. I think to the best of my recollection it was prior to
15 the Sarah Bush Lincoln Road, which there's a stoplight there.

16 Q. Okay. And that goes on for how long?

17 A. And then I just drove behind Weaver until I got to the
18 1200 East where I turned off.

19 JUDGE AMCHAN: Are you saying that Hudson is in the left
20 lane this entire time?

21 THE WITNESS: They are parallel the entire distance from
22 when I got behind her all the way to 1200.

23 Q. BY MS. GIVENS: You just finished up your story and you
24 missed something.

25 A. What did I miss?

1 Q. Pat Hudson cutting you off?

2 A. Yes.

3 Q. You did, didn't you?

4 A. We didn't go through that yet. We were talking about
5 the hospital is my first attempt to pass. That was the
6 second attempt to pass.

7 Q. Okay.

8 A. First attempt --

9 Q. So here we are, you are behind her now?

10 MR. LONERGAN: She's cutting him off.

11 JUDGE AMCHAN: It was close.

12 Q. BY MS. GIVENS: Here we are. You are behind Weaver?

13 A. Yes.

14 Q. And you decide to pass again?

15 A. The second pass was with the line of traffic.

16 I mentioned three cars came in behind Pat. Traffic was
17 backing up. She proceeded in front of Weaver, cut over, I
18 came in behind the third car to pass with the traffic. As
19 soon as the third car got past her, she cut back in front of
20 me.

21 Q. Were you not following the third car closely?

22 A. I wasn't following close.

23 Q. Did you have to slam on your brakes?

24 A. I believe I hit my brakes at that time. Yes.

25 Q. Okay.

1 A. Would I say slam the brakes? I don't recall if I
2 slammed them. I did hit my brakes.

3 Q. Hit your brakes hard enough that you did one of these
4 and move forward and hit your seat belt?

5 A. I don't recall.

6 Q. Would that not be kind of scary if you had to slam on
7 your brakes because somebody was going to hit you?

8 A. I said don't think I slammed my brakes. I hit my
9 brakes.

10 Q. So you don't recall having to slam on your brakes to
11 prevent hitting her, correct?

12 A. No.

13 Q. Okay. And so when you say she cut you off, what you are
14 really talking about is she got back in the fast lane?

15 A. Yes.

16 Q. She did? Okay. And since you were not traveling
17 directly and closely behind the third car, was there not room
18 for Pat to get in front of you safely?

19 A. Not at a normal safe distance. No.

20 Q. Okay.

21 A. In my opinion.

22 Q. In your opinion?

23 A. Yes.

24 Q. How close did you get to her bumper?

25 A. That's hard to say.

1 Q. Well, you were there. Can you --

2 A. I'd say it was closer than normally when a car would do
3 that, it was closer than a normal occurrence.

4 JUDGE AMCHAN: You said in your opinion it wasn't a safe
5 distance to move back to the left?

6 THE WITNESS: Correct.

7 JUDGE AMCHAN: Is it possible that she thought
8 otherwise?

9 THE WITNESS: Yes.

10 Q. BY MS. GIVENS: It's possible that she would have
11 thought otherwise, correct?

12 A. I don't think so, but I can't tell you what she thought.

13 Q. She had her blinker on?

14 A. I don't know that she did.

15 Q. She could have?

16 A. Could have.

17 Q. Okay. And she could have thought that she was making a
18 safe move, as far as you know?

19 A. Could have or could not have. I can't speak for what
20 she was thinking. I would be surprised honestly if she
21 thought that was the right, safe thing to do.

22 Q. Did you come close to hitting her?

23 A. As far as like bumping her bumper?

24 Q. Yes?

25 A. No.

1 Q. Okay. Not even close to hitting her, right?

2 A. I don't want to say I didn't come close to her. As far
3 as an accident, probably I was not close to having an
4 accident.

5 Q. Okay. So then it was not close to an accident, and you
6 didn't have to slam on your brakes, and so is it not possible
7 that from someone else's viewpoint, that was a safe maneuver,
8 given those circumstances?

9 A. I think what was going through my mind at the time, one,
10 why would she do that? It was very intentional.

11 Q. I'm not asking you what was in your mind. I'm asking
12 you given that set of circumstances, is it possible that she
13 thought that was a safe maneuver?

14 A. Again, I can't speak for her. I wouldn't have thought
15 it was a safe maneuver if I was in her position making that
16 move.

17 Q. How many written statements did you make about this
18 event?

19 A. One.

20 Q. Okay. And e-mails to Ryan Whitlock about the incident?

21 A. I don't recall.

22 Q. Could have?

23 A. Could have.

24 Q. E-mails to Sam Jurka?

25 A. I think Sam was a verbal, but could have had an e-mail.

1 Q. What about Gary Patrem?

2 A. Gary was a verbal, I believe.

3 Q. Okay. And how many times did you talk to Gary Patrem
4 about this incident?

5 JUDGE AMCHAN: I think it would be helpful to ask a time
6 period.

7 Q. BY MS. GIVENS: I'd like to know?

8 A. For the entire duration?

9 Q. No. Before Pat Hudson's discharge, how many times did
10 you talk, which was on the 17th of December. By the way,
11 this is not dated, Employer Exhibit 7. Do you know when you
12 filled this out?

13 A. I believe I filled it out the next morning.

14 Q. Okay. Do you remember talking to Gary Patrem about the
15 incident?

16 A. I talked to Gary in the command center, I know.

17 Q. Do you know when?

18 A. I believe it was on the 11th, the next morning. I think
19 actually the first discussion with Gary was probably when I
20 called in that day. I think I talked to him that day on the
21 phone, and when I was in the command center the next morning
22 before I was directed to go fill out the Huffmaster report, I
23 talked to him then, but I'm not sure of the verbal face-to-
24 face.

25 JUDGE AMCHAN: So you didn't come back and say let me

1 have a Huffmaster report. Somebody told you to fill out a
2 Huffmaster report?

3 THE WITNESS: Right. I called in the incident from the
4 job site, and I was told I needed to get with Huffmaster and
5 filled it out, so the first thing in the morning.

6 JUDGE AMCHAN: Who was it that told you to fill it out?

7 THE WITNESS: I believe it was Sam at the time.

8 Q. BY MS. GIVENS: Who did you call it into?

9 A. I called in the command center. I think it was Sam I
10 talked to on the phone. It was Gary I talked to the next
11 morning face-to-face.

12 Q. Okay. And you did not call the police?

13 A. I didn't.

14 Q. Okay. And why not?

15 A. Why would I?

16 Q. Right. So how many times did you talk to Gary Patrem
17 about it?

18 A. Maybe twice.

19 Q. Okay. That's before December 17th?

20 A. Maybe.

21 Q. Okay. Do you remember what you told him?

22 A. I think he asked me to walk through the occurrence of
23 how it occurred.

24 Q. Okay.

25 A. Most of the direction that we had had, as far as

1 A. No.

2 Q. Go to the hotel to talk to him?

3 A. No.

4 Q. Seen him at work?

5 A. Actually I was at lunch today with another group and saw
6 him walk in, but he did not have lunch with us.

7 Q. As far as you know, the Company never interviewed him
8 about this incident, right?

9 A. Not to my knowledge.

10 Q. You never asked him to fill out any kind of report?

11 A. No. As a driver, I filled out the report.

12 Q. Okay. So if we look at General Counsel's Exhibit 10(c),
13 do you have -- from when they first got in front of you to
14 when you pulled off on County Road 1200, do you have any idea
15 the approximate number of right-hand turns you could have
16 taken to turn off sooner? Do you have any idea looking on
17 the map? There's a couple of entrances to the municipal
18 airport, right?

19 A. Yes.

20 Q. There's an entrance to Sarah Bush, right?

21 A. Yes.

22 JUDGE AMCHAN: Is there an entrance to Sarah Bush on the
23 right? I see one on the left.

24 Q. BY MS. GIVENS: I meant right as in -- correct.

25 A. Yes. There's two entrances, there's County Road 28, you

1 can enter Sarah Bush that way, or you can enter at the prior
2 location.

3 JUDGE AMCHAN: At 28 you can make a right or a left,
4 correct.

5 THE WITNESS: Yes. That's correct.

6 Q. BY MS. GIVENS: And there's Old State Road, correct?

7 A. Yes.

8 Q. Okay. And it looks like there's actually a couple of
9 entrances to the airport. Is that your recollection, that
10 there are a couple of different turns to the airport?

11 A. There is only one entrance to the airport.

12 Q. Okay. And?

13 A. There is a stoplight, and there is an entrance to the
14 911 center.

15 Q. Okay.

16 A. And there's a little road that curves back into the
17 airport, but I don't know that that's always open. I think
18 there's a gate there. It's not a formal road. There's a 911
19 agency for the airport.

20 Q. Is there a spot that you could have at least pulled off
21 on to wait?

22 A. I guess I could have pulled into the 911 center.

23 Q. And you could have pulled into Loxa Road, correct?

24 A. I could have pulled into Loxa Road.

25 Q. You could have pulled into Old State Road?

1 A. Yes.

2 Q. And you could have pulled into the airport, correct?

3 A. I could have.

4 Q. And when they were in front of you, you could have
5 pulled left and turned left into Sarah Bush Hospital,
6 correct?

7 A. I could have.

8 MS. GIVENS: Okay.

9 JUDGE AMCHAN: On 9(a) at some point, it says 50 mile an
10 hour zone.

11 THE WITNESS: It changes from a 55 to a 50 through the
12 stoplight, and then it picks right back up to a 55 right
13 after the stoplight.

14 JUDGE AMCHAN: So they were riding side by side when you
15 approached that stoplight; am I correct?

16 THE WITNESS: Yes.

17 Q. BY MS. GIVENS: Okay. Did you ever tell Gary Patrem
18 that Brenda Weaver and Pat Hudson followed you from Rutledge?

19 A. I don't recall that I did.

20 MS. GIVENS: Okay.

21 JUDGE AMCHAN: You mean your recollection is that they
22 didn't?

23 THE WITNESS: I didn't notice them until Brenda was
24 honking the horn, so I don't know why I would say that.

25 Q. BY MS. GIVENS: So you never told Gary Patrem -- all you

1 said was you said what's in your report, so you never told
2 him I was trapped? You never said those words, "I was
3 trapped"?

4 A. I told him I was blocked.

5 Q. Well, how was it that you were blocked because you told
6 us that when Brenda Weaver was in front of you, that you did
7 not see Pat Hudson directly behind you, right?

8 A. That's right.

9 Q. Okay. And so there was never a situation where you were
10 driving in between Pat Hudson and Brenda Weaver, as far as
11 you remember?

12 A. No.

13 JUDGE AMCHAN: No, that's correct?

14 THE WITNESS: If you define trapped.

15 Q. BY MS. GIVENS: I'm not defining trapped. I asked you a
16 specific question, and the specific question was there was
17 never a time when you had Brenda Weaver in front of you, and
18 you recall seeing Pat Hudson driving behind you, correct?

19 A. Not that I'm aware of.

20 Q. Okay. And your testimony, was it not, that when
21 Pat Hudson passed you, she passed you at a normal rate of
22 speed, right?

23 A. I testified I'm not sure what speed she was traveling.

24 Q. She proceeded to get in front of you?

25 A. She passed me.

1 Q. And did not drive parallel to you for any excessive
2 period of time, right?

3 A. No.

4 Q. So the two cars were in front of you driving parallel at
5 a speed less than you desired, and you felt blocked, correct?

6 A. Yes.

7 Q. Okay.

8 A. Let me say not less than desired. Less than what I
9 would consider the flow of traffic. That's a difference in
10 your mind. Again, I was traveling a certain speed. They
11 pulled around me. Proceeded to obviously slow down and
12 slowed traffic down.

13 Q. So you never mentioned to the Company the several
14 opportunities that you had to pull over to avoid the
15 situation. You never told anybody that, right?

16 A. No.

17 Q. Nobody ever asked you, right?

18 A. I don't recall that they did. No.

19 Q. Okay. And do you remember anybody ever asking you
20 specifically if you were trapped between the cars? Do you
21 remember anybody ever asking you that?

22 A. That, I don't know.

23 MS. GIVENS: Okay.

24 JUDGE AMCHAN: I guess I'm kind of curious as to when did
25 you start feeling trapped.

1 THE WITNESS: It became obvious to me.

2 Q. BY MS. GIVENS: Well, I have something very dangerous
3 that I'm about to do.

4 A. It became obvious to me when Pat passed me, the hand
5 motion started, both cars made a very obvious slow down in
6 traffic. That's when I started feeling trapped. When I came
7 into the left lane to pass and was not allowed to at that
8 slower speed, I was feeling very harassed at that point. It
9 was obvious what was happening.

10 JUDGE AMCHAN: Why didn't you turn on Loxa?

11 THE WITNESS: Well, one, I had a job that I proceeded
12 to, and I was hoping that obviously the situation would not
13 continue. Getting off because of not knowing what was going
14 to happen, to be honest, Loxa, that road curves back south,
15 comes back, I believe, west, takes a complete alternate route
16 even more out of the way.

17 JUDGE AMCHAN: If you continued on 16, say they were
18 blocking you the whole way, how long would it have taken you
19 from the turnoff to where you were going to your job? Let's
20 assume they were going the speed limit.

21 THE WITNESS: If I had taken the Loxa Road?

22 JUDGE AMCHAN: No, if you hadn't turned off, just stayed
23 behind them.

24 THE WITNESS: All the way into town?

25 JUDGE AMCHAN: All the way to your job.

1 THE WITNESS: How much longer?

2 JUDGE AMCHAN: No. How long would it have taken you?

3 THE WITNESS: Well, that's probably halfway between
4 Mattoon and Charleston. Usually that's anywhere between
5 maybe 12 to 15 minute drive when we were approximately
6 halfway there, or three-quarters. It might have taken
7 another four or five minutes to get to the stop.

8 JUDGE AMCHAN: Four or five minutes is what it would
9 have taken you had you just stayed where you were?

10 THE WITNESS: Probably about to the actual job site from
11 where I turned off?

12 JUDGE AMCHAN: Yes.

13 THE WITNESS: Probably five to eight minutes from the
14 stoplight next.

15 JUDGE AMCHAN: If you were going your normal speed, how
16 long would it have taken you?

17 THE WITNESS: A couple of minutes less. Three minutes
18 less.

19 Q. BY MS. GIVENS: Judge, I hate to --

20 JUDGE AMCHAN: Go ahead.

21 THE WITNESS: Just my comment. It wasn't just the
22 speed. It was the conflict I was trying to avoid. That's
23 why I turned off obviously.

24 JUDGE AMCHAN: Because you believed they were side by
25 side on purpose.

1 THE WITNESS: Yes.

2 MS. GIVENS: Judge, you asked him when he began to feel
3 trapped. I almost objected to your question.

4 JUDGE AMCHAN: I thought he said he felt trapped. All
5 right, blocked. Let's say blocked. I amend my question.
6 When did you start to feel blocked? Are the answers the
7 same?

8 THE WITNESS: The answer is the same. I can repeat it.

9 Q. BY MS. GIVENS: Thank you. I appreciate that. So they
10 are in front of you?

11 A. Yes.

12 Q. When you pull off?

13 A. I had a destination I was going to. Yes.

14 Q. Okay. Why is it that you did not pull off on County
15 Road 1200, wait a brief moment, and get back on Highway 16
16 and go to your job?

17 A. There was an alternate route, so I just took the
18 alternate route. That's when I didn't know what they were
19 going to do. I didn't know if they were going to turn
20 around.

21 Q. The next turn around was someplace in the distance,
22 right?

23 A. Yes.

24 Q. So they would have had to have turned around on Highway
25 16, gone west, gone to the next turn around, and come all the

1 way back around to catch you, correct?

2 A. Yes.

3 Q. Okay. And you would have had time, would you not have,
4 to have done a U-turn on County Road 1200, and gotten on 16,
5 and gone the speed you desired without them catching you,
6 would you not have?

7 A. They would have been in front of me unless they turned
8 around. Yes. You are saying that they turned around to
9 chase me?

10 Q. Yes. Yes?

11 MR. LONERGAN: Objection, we are now assuming three
12 things down the road.

13 Q. BY MS. GIVENS: Why go two miles out of your way when
14 you could have waited 30 seconds for them to get a little
15 farther ahead of you so you didn't feel blockaded or
16 frustrated?

17 A. I was just removing myself from the situation. Why be
18 back in that situation when I can take an alternate route.
19 That was my thought.

20 Q. You could have waited 30 seconds?

21 A. I could have.

22 Q. Okay. And you never told anybody at the Company that
23 they trapped your vehicle. You never told anybody that?

24 A. I'd say I'm sure I didn't. I would consider the term
25 blocked. I wasn't trapped. To me the term "trapped" is

1 again --

2 Q. Nobody swerved at you, right?

3 A. Other than when Pat cut me off coming back into the
4 driving lane, the fast lane.

5 Q. But you were not in her path when she did that, correct?

6 A. I was in her path. Yes, the path that she was moving
7 into.

8 Q. No, you were not?

9 A. I was in the left lane. She was in the right lane. She
10 swerved back in front of me in the left lane.

11 Q. Right.

12 A. So I was in the path she moved into.

13 Q. But you were not in the path that she swerved into? '

14 A. I was, if I understand your question. I was in the left
15 lane, she was in the right, and she swerved into the left
16 lane.

17 Q. At this point she is ahead of you?

18 A. Yes.

19 Q. When she gets over?

20 A. Yes.

21 Q. So you were not in the path of her vehicle when she
22 switched lanes?

23 A. No. I was in the path that she moved into.

24 Q. So it was not your impression that she was trying to hit
25 you?

1 A. I don't think she was trying to intentionally hit me. I
2 think she was intentionally trying to cut me off.

3 Q. Okay.

4 A. The reason I say cut off, it was very quick, and there
5 was not a car in front of her that she was trying to pass, so
6 why would she switch lanes?

7 Q. You were irritated at that point, and wondering what the
8 hell she was doing, were you not?

9 A. I was wondering what she was doing. Yes.

10 Q. Okay.

11 A. I shouldn't say I was wondering. I knew what she was
12 doing.

13 Q. You did?

14 A. She was trying to block me in on the pass.

15 Q. Did you happen to see, when you pulled off, did you look
16 to see where they went? Were you not curious where they were
17 going after you pulled off?

18 A. I had no idea where they were going.

19 Q. And you weren't curious to see what they did?

20 A. No. I had a job to do. I just proceeded to the job.

21 MS. GIVENS: I will need a second.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record.

24 MS. GIVENS: I have no further questions.

25 CROSS-EXAMINATION

1 Q. Yes?

2 A. I do recall me having a verbal talk with Huffmaster. I
3 don't recall the document.

4 Q. You don't recall being handed this?

5 A. I don't remember. I might have. I just don't know.

6 Q. Do you remember receiving instructions about what to do
7 if you felt you had been followed?

8 A. Yes. I think that was during the discussion.

9 Q. What were those instructions?

10 A. I think at the time, if it was something that was like a
11 life-threatening situation, it was a call to the police.

12 Q. Okay. Do you remember, look at the third page, it's the
13 first bullet point, "Drive directly to the nearest police
14 facility, or return to company property." Do you remember
15 being told that?

16 A. I might have. I don't recall.

17 Q. Do you remember people asking you questions about that?

18 A. What's that?

19 Q. Do you remember anyone asking you questions about that
20 at the meeting?

21 A. I don't.

22 Q. So you didn't drive directly to the nearest police
23 facility, did you?

24 A. No. But this says, "When leaving the company property."
25 They were in front of me.

1 Q. You left from the central office, right?

2 A. I left from the central office.

3 Q. And you didn't return to the company property, did you,
4 after this incident?

5 A. Not after the incident. No.

6 Q. And when you met, when you filled out your report up
7 there?

8 A. Exhibit 16?

9 Q. Can you tell me again who was there when you filled it
10 out?

11 A. I believe just a guard from Huffmaster, a security
12 guard.

13 Q. And do you remember that guard's name?

14 A. I don't.

15 Q. Okay. Do you remember were you given instructions on
16 how to fill that out?

17 A. Not specific instructions. No.

18 Q. Okay. If you look --

19 A. I think I was given the basics. Your name, location,
20 incident.

21 Q. If you'll look at the last page of that where you
22 actually write the description of what happened?

23 A. Yes.

24 Q. And you write, "Describe in detail the incident as you
25 know it happened." Do you see that?

1 said this before. So this incident happened around 9:30 in
2 the morning.

3 THE WITNESS: I don't recall the exact time. I think I
4 reported it as 9:30. We met at the command center, left
5 sometime after that, went into the office, got our orders for
6 the day, so it was sometime after 9:00. Sometime before
7 11:00.

8 JUDGE AMCHAN: And the first time you told anybody about
9 this was what time?

10 THE WITNESS: As soon as it happened and we got to the
11 job site, I think I called it into the command center on the
12 phone.

13 JUDGE AMCHAN: Were you at that job all day?

14 THE WITNESS: No. We were there for a period of time,
15 and we had other jobs.

16 JUDGE AMCHAN: Anything else?

17 MS. GIVENS: Hang on for one second.

18 MR. LONERGAN: It's to us, right?

19 JUDGE AMCHAN: I guess Ms. Givens wants a second. You
20 want to go off the record while you look through that?

21 MS. GIVENS: Yes, sir.

22 (Off the record.)

23 JUDGE AMCHAN: Back on the record.

24 CROSS-EXAMINATION (cont.)

25 Q. BY MS. GIVENS: You returned to ICTC at about two

1 side, did Mr. Maxwell stay within the headlights of the
2 vehicle as he walked back and forth?

3 A. He did.

4 Q. As Mr. Flood inches his car forward, how fast
5 was he, in your estimation, or to your recollection, was he
6 going?

7 A. A couple of inches at a time would be almost negligible.

8 Q. Do you believe that Mr. Maxwell made intentional contact
9 with the van?

10 A. I thought so. It appeared to me.

11 MR. DUMBACHER: Nothing further.

12 MS. GIVENS: Nothing further.

13 MR. GRANT: Nothing.

14 JUDGE AMCHAN: You can step down. Thank you.

15 (Witness excused.)

16 (Whereupon,

17 LAWRENCE DIGGS

18 was called as a witness by and on behalf of the Respondent
19 and, having been first duly sworn, was examined and testified
20 as follows:)

21 DIRECT EXAMINATION

22 Q. BY MR. DUMBACHER: Mr. Diggs, good afternoon.

23 A. Afternoon.

24 Q. Who is your employer?

25 A. Consolidated Communications.

- 1 Q. What is your position with Consolidated Communications?
- 2 A. Manager of Operations for Lufkin, in Dallas.
- 3 Q. Is that Texas?
- 4 A. Yes. Texas.
- 5 Q. Is that where you live?
- 6 A. Yes.
- 7 Q. Were you in that position in December 2012?
- 8 A. Yes.
- 9 Q. Do you recall visiting Mattoon in December of 2012?
- 10 A. Yes.
- 11 Q. How many times have you been to Mattoon?
- 12 A. I think this is my third time to be here.
- 13 Q. Okay.
- 14 JUDGE AMCHAN: Including today?
- 15 THE WITNESS: Including today.
- 16 Q. BY MR. DUMBACHER: Do you recall working during the
- 17 Union strike on Monday, December 10, 2012?
- 18 A. Yes.
- 19 Q. Were you assigned to a partner?
- 20 A. Yes. Troy Conley.
- 21 Q. Do you recall where you reported that morning?
- 22 A. Yes. We reported at the Rutledge building. I think
- 23 that's what you always call it.
- 24 Q. Did you go to the central office after that?
- 25 A. Yes, we did.

1 Q. What were your job duties that day?

2 A. We were repairing failed circuits, trouble tickets on
3 special circuits basically.

4 Q. Out in the field?

5 A. Yes.

6 Q. Okay. Do you recall what your first assignment was that
7 morning?

8 A. Yes. We were going out to repair a failed circuit at a
9 cell tower.

10 Q. This is probably a dumb question, but is that
11 residential or a commercial site?

12 A. That's commercial.

13 Q. Did Mr. Conley -- who drove that day?

14 A. Troy drove.

15 Q. Do you recall what type of vehicle he drove?

16 A. It was one of our -- it was one of our service trucks.
17 It was a 16 cab, either Chevrolet or Ford.

18 Q. Do you recall an encounter you and Mr. Conley had on
19 Highway 16 that morning?

20 A. Yes.

21 Q. Do you recall seeing a car of a Consolidated employee
22 pass you that morning?

23 A. Yes, I did. I didn't know it was a Consolidated
24 employee; but yes, I did.

25 Q. What happened?

1 A. This car came speeding up besides us, stopped and looked
2 for a moment at us, and pulled in front of us. And then a
3 car pulled up besides that car, and the both of them slowed
4 down at a fairly fast pace. They kind of shut it down and
5 made us slow down.

6 Q. Okay. Do you recall hearing one of the cars honk its
7 horn?

8 A. I heard a horn honk. Yes.

9 Q. Was the vehicle you were in, was in the right lane or
10 left lane?

11 A. We were in the right lane.

12 Q. Is that highway two lanes in one direction?

13 A. It's two lanes in one direction. Yes.

14 Q. Do you recall if Mr. Conley identified the two vehicles?

15 A. When the second vehicle pulled up, he said that's -- I
16 think he said it was Pat Hudson, I believe, if I recall.

17 Q. Do you recall if he identified the other driver?

18 A. If so, I didn't remember. I didn't know either one of
19 them.

20 Q. You don't know Brenda Weaver or Pat Hudson?

21 A. No.

22 Q. Do you recall was there a point where those two
23 vehicles --

24 MR. GRANT: Objection, leading.

25 JUDGE AMCHAN: Sustained. Just ask the man what he

1 remembers from this point on.

2 Q. BY MR. DUMBACHER: Okay. Sure. What's your
3 recollection of what happened after what you've described
4 thus far?

5 A. What happened is the two cars in front of us -- and
6 we're slowed down to much less speed than what we were
7 traveling previous -- after the cars started stacking up
8 behind us, and I saw some motion between the two cars that
9 were in front of us. And the one that was in the left-hand
10 lane pulled in front of the one that was in front of us. I
11 guess they done that to let some of the cars come through
12 that had stacked behind us. When that happened, after those
13 cars went by, Troy pulled in behind the last car, and he made
14 an attempt to pass the two cars. They pulled back, and the
15 one that was in front of us pulled back, paralleling each
16 other, and continued to block us from going at the normal
17 speed that we were trying to travel at.

18 Q. Was there anything, to your recollection, that was
19 unsafe about what those two vehicles did?

20 A. Yes. When they pulled in and slowed down, the worst
21 accident I had ever been in was getting hit from the rear,
22 and I remember back looking to see if anybody was going to
23 hit us.

24 Q. Tell me what you recall about Mr. Conley attempting to
25 pass the two vehicles? He was in the right lane?

1 A. Yes. He was in the right lane. And after some of the
2 cars that had stacked up behind us, after they came by and he
3 pulled over, he tried to go in with them. And then the car
4 that was, not in front of us, but the one in front of that
5 car pulled back in, and Troy had gained some speed trying to
6 get by. Of course, he had to put on his brakes again, and he
7 stopped, and he slowed down and went and got back into the
8 right-hand lane again.

9 Q. Do you remember, did you end up going to the commercial
10 site that you testified that you were going to?

11 A. Yes, we did.

12 Q. Do you remember how you got there?

13 A. Troy ended up turning on a road, and we went around the
14 back roads to get to the cell tower.

15 Q. Did you understand that to be a direct route to the cell
16 tower?

17 A. No, it wouldn't have been a direct route. No. It
18 wasn't a direct route. The main highway was right there. It
19 was definitely the long route.

20 MR. DUMBACHER: Thank you. I believe Ms. Givens will
21 have questions for you, and Mr. Grant as well.

22 CROSS-EXAMINATION

23 Q. BY MS. GIVENS: Howdy.

24 A. Hi.

25 Q. You -- at some point you and Conley went back to

1 Rutledge, did you not?

2 A. At some point when the day was -- yes.

3 Q. Okay. And who did you speak to that night about this
4 incident?

5 A. I didn't speak to anyone about it.

6 Q. Okay. Do you know if Troy did?

7 A. Yes. Troy reported it after it happened.

8 Q. Do you know who he reported it to?

9 A. I really don't know.

10 Q. Okay. You weren't there?

11 JUDGE AMCHAN: After it happened, how long after it
12 happened?

13 THE WITNESS: Did Troy report it?

14 JUDGE AMCHAN: Yes.

15 THE WITNESS: I know it was that day, is all I know.

16 JUDGE AMCHAN: Do you know where you were when he
17 reported it?

18 THE WITNESS: I don't know. He called on the phone and
19 told somebody. I don't know who it was.

20 JUDGE AMCHAN: But you remember him calling somebody on
21 the phone?

22 THE WITNESS: Yes.

23 JUDGE AMCHAN: And you hadn't gone back to Rutledge yet?

24 THE WITNESS: No.

25 Q. BY MS. GIVENS: Do you know if he made any other kind of

1 report after he got back to Rutledge?

2 A. No, I do not know.

3 Q. Okay. Have you ever seen any kind of written report
4 that he made?

5 A. No.

6 Q. No? Were you ever present when he was asked to give a
7 written report?

8 A. No.

9 Q. So the night that you came back, you didn't speak to
10 anybody in management about it. When did you leave town
11 after the strike?

12 A. It was -- it seemed like it was on Friday after the
13 strike was settled.

14 Q. Okay. Before you left, who did you speak to about the
15 incident in management?

16 A. I didn't speak to anyone about it.

17 Q. Okay. And you were not present -- you were not present
18 when Mr. Conley talked to management, correct?

19 A. That's correct.

20 Q. Okay. And so if, for example, Mr. Conley had a
21 conversation with Ryan Whitlock, you didn't hear what he told
22 him?

23 A. No.

24 Q. And you were never present during any conversation that
25 Mr. Conley had with Gary Patrem, for example?

1 Q. If her brakes didn't come on, as far as you know, and
2 she slowed down, is it possible that she simply let up on the
3 accelerator? Is that possible?

4 A. I don't think so. I don't think the car could have
5 slowed down that fast without having to apply the brakes, but
6 I didn't see the lights come on.

7 Q. Okay. And then when the second car pulled alongside the
8 truck, it didn't linger next to the truck. It continued
9 ahead and pulled up beside the car in the front. Is that
10 what you remember?

11 A. Would you ask that again?

12 Q. So the second car -- the first car is in front of you,
13 the truck is behind it, and then the second car passes you on
14 the left, correct?

15 A. Right.

16 Q. Okay. And it didn't drive parallel to the truck, did
17 it, as far as you saw?

18 A. Parallel to the car in front of us.

19 Q. Okay. How long did that take place before the driver on
20 the left pulled ahead of the driver in front of the truck?
21 About how long?

22 A. I can't say. I don't remember how long. I wouldn't
23 even try to speculate on that.

24 Q. And at this point, both vehicles, as far as you know,
25 are not traveling below the speed limit, correct?

1 A. They were traveling below the speed limit.

2 Q. They were?

3 A. I don't know if they were traveling below the speed
4 limit, but they were traveling much slower than everyone else
5 was traveling prior to them pulling in front of us. I don't
6 even know what the speed limit is out there.

7 Q. So they could have been driving the speed limit?

8 A. They could have. ,

9 Q. At what point did Troy get mad about it? Was it at this
10 point, or was it after he got in the other lane?

11 A. I don't remember Troy getting mad.

12 Q. How long were you behind the two cars before he pulled
13 into the left lane?

14 A. I don't know.

15 Q. Okay. You said that once the car that was in the left
16 lane pulled in front of the other car, that several cars
17 passed you. Did they pass the two vehicles, also, in front
18 of you?

19 A. Yes.

20 Q. So about how many vehicles passed on the left?

21 A. I wish I had made notes. I don't know. I would say
22 probably 10 cars.

23 Q. And at some point, you saw Troy Conley get behind those
24 cars, yes?

25 A. Yes.

1 Q. And at some point does he then get parallel with the car
2 that had just been in front of you guys?

3 A. He didn't get that far.

4 Q. Okay. So which car was it -- right before he goes into
5 the left lane, there are two cars in front of you that have
6 been identified by Mr. Conley to you as being Consolidated
7 strikers, right? Okay. And you recall some cars passing,
8 and Mr. Conley gets in the left lane. Which car is it that
9 prevents him from passing? Is it the first car, or the
10 second car?

11 MR. DUMBACHER: What do you mean by first and second
12 car?

13 JUDGE AMCHAN: Is it the car just in front of him?
14 Which one is the first?

15 Q. BY MS. GIVENS: Is it the car just in front of you,
16 which we'll call car one, or is it the car in front of that
17 car, which is car two?

18 A. It was car two.

19 Q. So he was able to pass car one?

20 A. He didn't really pass car one.

21 Q. No?

22 A. He pulled outside, and about the time he starts
23 approaching car one, car two pulls back and slows down.

24 Q. Do you know where in relation to car one he is at the
25 time that car two pulls into the lane, the left lane? Has he

1 even begun to pass her?

2 A. Ask that again, please.

3 Q. As car two pulls into the left lane, has the company
4 truck even begun to pass car one yet?

5 A. No.

6 Q. So at this point, there's at least a car length distance
7 between the company truck and car two, correct?

8 A. I would say so. Yes.

9 Q. And car two gets into the left lane and does what?

10 A. Slows down.

11 Q. Okay. Slows down, like slam on its brakes, we're going
12 to hit the car slow down?

13 A. It wasn't a slam on the brakes.

14 Q. Okay. Do you recall her brake lights coming on at that
15 point?

16 A. I don't recall. I wasn't making a mental note of
17 whether the brake lights were on or not.

18 Q. All right. So Mr. Conley, as you recall, did not have
19 to slam on his brakes, correct?

20 A. He had to put his brakes on. He didn't what I would
21 call slam on his brakes. He put his brakes on and pulled
22 back in behind the two cars running parallel.

23 Q. My question was: Did it appear to you that there was
24 any danger that he was going to hit the car that had just
25 pulled in the left lane?

1 A. On that particular occasion. No.

2 Q. So in your view, the reason he put on his brakes was to
3 slow down and get behind the other car again?

4 A. Yes.

5 Q. Okay. So, as far as you could tell, he was not putting
6 on his brakes to avoid the slow moving car that was in front
7 of him, correct?

8 A. Not at that time.

9 Q. Okay. And before -- let's see, you went home on Friday.
10 Before Monday, did you ever talk to anybody in management
11 about any of this?

12 JUDGE AMCHAN: Monday, December 17?

13 Q. BY MS. GIVENS: Monday, December 17, because you said
14 you didn't before you got to Pennsylvania?

15 MR. DUMBACHER: Got to Texas.

16 Q. BY MS. GIVENS: Sorry. I wasn't looking at his boots.

17 A. Would you ask that again? Are you talking about the
18 following Monday?

19 Q. You said you got back to Texas when? Friday?

20 A. I went back on Friday. I don't know what day that was.

21 Q. Did you work Friday?

22 A. We did not work Friday.

23 Q. That was a travel day. So you didn't talk to anybody in
24 management before you left, and you didn't talk to anybody in
25 management about the incident on Friday, right?

1 A. No.

2 Q. And you don't recall talking to anybody on Monday about
3 the incident, do you?

4 A. No.

5 Q. When is the first time that you told your story to
6 anybody in management, that you remember?

7 A. I don't remember. I don't think I ever told anybody in
8 management.

9 Q. You think you talked to the lawyers?

10 A. No, I didn't talk to lawyers. I told my guys back there
11 in Texas about it.

12 Q. Okay. Now, the lawyers that are in the room, you've
13 talked to them recently, have you not?

14 A. I've talked to them. Yes.

15 Q. To get ready for the hearing, right?

16 A. Yes.

17 Q. And you went over your version of events, right?

18 A. Yes.

19 Q. Did you look at a map?

20 A. Didn't look at a map.

21 Q. You didn't look at a map with them?

22 A. No.

23 Q. And you and Mr. Conley talked about the events that
24 happened, right?

25 A. We've talked about it, yes.

1 Q. Did you two have the same basic recollection of what
2 happened, as far as you know?

3 A. Pretty much, except for I thought that they slowed us
4 down slower than he thought we had.

5 Q. Okay. Did he tell you how far he thought they slowed
6 you guys down?

7 A. Yes. He said, I was thinking he said he felt like it
8 was 40, 45 miles an hour.

9 Q. Okay.

10 A. I feel like it was more like 20.

11 Q. And that's not a 20 mile an hour road, is it?

12 A. No. It wouldn't be a 20 mile an hour road.

13 Q. This conversation with Mr. Conley was this week?

14 A. A couple of weeks ago.

15 Q. Okay. Was that before or after you got my subpoena?

16 A. That was after.

17 Q. Okay. Who -- were you in town or was it on the --

18 A. On the --

19 Q. Since you've been in town, were you able to talk to him
20 again about the incident and go over the details?

21 A. I didn't go over any details with him. I talked to him
22 about has he heard anything about when we were going to
23 testify? As far as details, we didn't talk about that
24 anymore.

25 MS. GIVENS: Okay. Can we go off the record?

1 (Off the record.)

2 MS. GIVENS: I don't have any further questions.

3 JUDGE AMCHAN: Do you have any, Mr. Grant?

4 MR. GRANT: No questions.

5 JUDGE AMCHAN: Any, counsel?

6 MR. DUMBACHER: No, sir. Thank you, Mr. Diggs.

7 JUDGE AMCHAN: Thank you.

8 (Witness excused.)

9 (Whereupon, at 5:00 p.m., the hearing in the above-entitled
10 matter was continued, to resume at 8:30 a.m., Friday, August
11 23, 2013.)

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1 CERTIFICATION

2 This is to certify that the attached proceedings before
3 the National Labor Relations Board (NLRB), Region 14, in the
4 matter of CONSOLIDATED COMMUNICATIONS d/b/a ILLINOIS
5 CONSOLIDATED TELEPHONE COMPANY, Case Nos. 14-CA-094626 and
6 14-CA-101495, at Mattoon, IL, on August 22, 2013, were held
7 according to the record, and that this is the original,
8 complete, and true and accurate transcript that has been
9 compared to the reporting or recording accomplished at the
10 hearing, that the exhibit files have been checked for
11 completeness and no exhibits received in evidence or in the
12 rejected exhibit files are missing.

13

14

15

16

Deborah Carter

17

Official Reporter

18

19

20

Kathryn A. Mirfin

21

Transcriber

22

23

24

Susan Kramer

25

Official Reporter

Illinois Consolidated Telephone Company, 08/23/13

14-CA-094626 and 14-CA-101495

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1 UNITED STATES OF AMERICA

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD

3 REGION 14

4 _____

5 _____

6 In the Matter of: _____

7 _____

8 CONSOLIDATED COMMUNICATIONS d/b/a _____

9 ILLINOIS CONSOLIDATED TELEPHONE _____

10 COMPANY, _____

11 _____

12 Respondent, | Case Nos. 14-CA-094626

13 and | 14-CA-101495

14 _____

15 INTERNATIONAL BROTHERHOOD OF _____

16 ELECTRICAL WORKERS, LOCAL 702, _____

17 AFL-CIO, _____

18 _____

19 Charging Party. _____

20 _____

21 _____

22 The above-entitled matter came on for hearing pursuant
23 to notice, before ARTHUR J. AMCHAN, Administrative Law Judge,
24 at Lake Land College, Workforce Development Center Building,
25 Room 105, 305 Richmond Avenue East, Mattoon, IL 61938, on
26 Friday, August 23, 2013, at 8:30 a.m.

A P P E A R A N C E S

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1		I N D E X				
2						VOIR
3	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
4						
5	Dawn Redfern	980	997	1017	1018	--
6			1011			
7						
8	Jenny Belleau	1019	--	--	--	--
9						
10	Tara Walters	1022	1029	1046	1050	--
11			1041			
12						
13	Sarah Greider	1052	1064	1088	1093	--
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14-CA-094626 and 14-CA-101495

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1		E X H I B I T S	
2	EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
3	JOINT		
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1 P R O C E E D I N G S

2 JUDGE AMCHAN: We'll go on the record.

3 MS. GIVENS: Mr. Grant has been obsessed with the
4 timeline of the video and the inability of the video to match
5 real time as we kind of understand it. And he's reached a
6 conclusion that I think is borne by the video. I almost
7 wonder if we shouldn't try to work Huffmaster over.

8 But here's the thing; there are two videos spliced
9 together at the one incident right after the Sarah Greider
10 incident, and it's playing on the video at what time?

11 MR. GRANT: When you jump from 9:57 to 10:01, you have
12 one set of images. When you jump to 10:43, all the cars in
13 the background change. When you jump to 10:05, all those
14 cars are in the back, and they are in the background. You
15 start going forward, and you see cars are there; cars are not
16 there. And it's not just one car. It's like the cars are
17 coming and going, and then they are at the exact same place
18 where they were before, and it's like, my theory is that
19 there are two videos. One of them is off time stamped a
20 little bit. They were spliced together, and it's jumping
21 around.

22 MR. LONERGAN: Here's my theory. My theory is after
23 talking with Huffmaster, they are all separate video clips.
24 My theory is you can listen to the video, and at one point
25 you can hear one guy saying the time is wrong. When you are

1 putting all the clips together, the time is off. From the
2 beginning, I'm saying from 10 to 11, there is a question if
3 you look at it, it's darker and lighter, too.

4 You are right about the cars. I think Ms. Givens'
5 suggestion is a good one. We can work with Huffmaster over
6 the break and get satisfied. I think you are absolutely
7 right, not about two videos, but about the splicing of the
8 problem.

9 I would say this, one more thing: I think the incidents
10 that we're talking about, though, there's really not a
11 question. I think the Greider time is 10:05. She had an 11
12 o'clock appointment, so I feel comfortable with that. Rankin
13 was there, as he testified, at an 11 o'clock meeting, and the
14 meeting was over, so I feel comfortable about that. I feel
15 comfortable those, though, times are right.

16 MS. GIVENS: We do, too. At this point, though, unless
17 we get this clarified by some kind of stipulation, our
18 objection to the video would be that the time on the video
19 represents real time, and that the order of each incident,
20 each discrete snippet of video is in real time actually
21 before or after the snippet before or after. We do not know
22 that the order that's in the video is actually real-time
23 order.

24 JUDGE AMCHAN: The one place where it strikes me as
25 possibly a snippet is whether Ms. Hudson was parked right

1 there at the exit just before she left. Her recollection was
2 that she wasn't. The video shows -- it suggests that she
3 was.

4 MS. GIVENS: For one incident. For one, not both.

5 JUDGE AMCHAN: It's the Greider incident.

6 MS. GIVENS: Right, but not the Kurt Rankin incident.

7 MR. LONERGAN: It's not at the same place. Kurt Rankin,
8 she's up at the top coming down.

9 MS. GIVENS: Greider, you can see where she had been
10 parked. Kurt Rankin, you cannot. She wasn't parked.

11 MR. GRANT: That's what the video shows. I'm
12 increasingly worried about people getting questioned or
13 cross-examined over that video and getting very confused over
14 that time stamp.

15 MR. LONERGAN: I agree with you. I see the same problem
16 you do. We will work hard to get that isolated. I'll be
17 glad to conference call with you or Ms. Givens or
18 Mr. Whitlock. You and he both seem to have a good eye for
19 detail, and I think between the cars parking there and the
20 clear difference in the daylight --

21 MS. GIVENS: And the number of picketers.

22 MR. LONERGAN: And, Chris, we can work together on it,
23 and we can even have him rearrange it and put a clip to
24 practice if you need to do that. There are all just separate
25 little clips.

1 MS. GIVENS: What we may need is actual original video.

2 MR. LONERGAN: I will take it on me to work with

3 Huffmaster over the break.

4 (Off the record.)

5 JUDGE AMCHAN: Back on the record.

6 MR. LONERGAN: We'll call the next witness,

7 Dawn Redfern.

8 (Whereupon,

9 DAWN REDFERN

10 was called as a witness by and on behalf of the Respondent

11 and, having been first duly sworn, was examined and testified

12 as follows:)

13 DIRECT EXAMINATION

14 Q. BY MR. LONERGAN: Please state your name for the record.

15 A. Dawn Redfern.

16 Q. Spell your last name.

17 A. R-e-d-f-e-r-n.

18 Q. By whom are you employed?

19 A. ICTC, Illinois Consolidated Communications.

20 Q. And what's your position?

21 A. The assigned business customer service; the legal

22 position title is Staff Specialist 3.

23 Q. Okay. How long have you been in that position?

24 A. In that position approximately two years.

25 Q. And is that position covered in the bargaining unit

1 under the Union contract?

2 A. No.

3 Q. Was that your position in December 2012?

4 A. Yes.

5 Q. And where do you report to work?

6 A. At the Rutledge facility.

7 Q. Do you typically drive to work?

8 A. Yes.

9 Q. Have you ever been employed in a Consolidated position
10 that was represented by Local 702 of the IBEW?

11 A. Yes. When I began with the Company as an operator, I
12 was never a part of the Union, but you were able to be a part
13 of the Union.

14 Q. Do you recall a strike that took place in December 2012?

15 A. Yes.

16 Q. Did you work on Monday, December 10, 2012?

17 A. Yes, I did.

18 Q. And where were you assigned to work that day?

19 A. At the Rutledge facility.

20 Q. Did you drive to work that day?

21 A. I did drive.

22 Q. By yourself?

23 A. Yes.

24 Q. About what time?

25 A. Approximately 8:30.

1 Q. And describe your experience driving into the facility
2 that morning?

3 A. I always go and turn on 17th Street. When I was
4 approaching the U.S. Bank area, cars were parked on both
5 sides of the road. We had stopped because all of the
6 Consolidated trucks were leaving the parking lot in a parade.
7 It was just like a one road, so everyone that was going to go
8 into the parking lot, we had to pull off to the side.

9 Q. What went on when you were pulled off to the side?

10 A. I could see groups of people at the entrance, and they
11 were yelling and blowing their whistles at all of the trucks
12 that were leaving.

13 Q. You went into work?

14 A. Yes.

15 Q. And what time did you leave work that day?

16 A. I left work approximately 5:00 p.m.

17 Q. Is that typical time?

18 A. Yes. I usually work from 8:30 to 4:30 or, no, 8:30 to
19 5:00, or 8:00 to 4:30.

20 Q. Okay. And tell me about how you exited the building
21 when you got to your car and you left. Just kind of run
22 through the whole thing.

23 A. Basically, we were informed that we were going to start
24 ending the day at about 4:50, and we were to meet downstairs.
25 And everyone was ending at approximately 5 o'clock. We were

1 just going to leave in a parade.

2 Q. Okay. And how did you get to your car?

3 A. I had to park that morning really close to where all of
4 the picketers were, so Mike Croy volunteered to go get my car
5 and pull it up to the door.

6 Q. Did that bother you that you parked there?

7 A. It bothered me because there were so many people out
8 there, and the way they were yelling and blowing their
9 whistles.

10 Q. So then you got to your car, and what happened?

11 A. I got to my car, and we paraded out to the north exit.

12 JUDGE AMCHAN: Do you know how many cars were in the
13 caravan?

14 THE WITNESS: I would say I was probably the maybe fifth
15 car, and then there were several cars behind me. At the end
16 of the day, that's when all the people that were filling in
17 for techs, they were coming in and leaving, so I don't know
18 how many were behind me.

19 Q. BY MR. LONERGAN: When you say "filling in for techs,"
20 what job is that?

21 A. The technicians that would drive the company trucks.

22 Q. Okay. So then did you all get in one line or one
23 caravan?

24 A. Yes, we did. We just all pulled out behind each other,
25 and we just followed the leader.

1 Q. Okay. Do you recall who was in front of you?

2 A. I believe it was Angel Maddox (ph.).

3 Q. What was her position?

4 A. She's a customer service representative.

5 Q. Business customer service?

6 A. Yes.

7 Q. And then what happened? Do you see the Joint Exhibit 7
8 here?

9 A. Yes.

10 Q. Can you kind of point where you maybe parked, and just
11 how the caravan lined up? You can come on up here, if you'd
12 like.

13 A. That morning I had to park back here on the last row.

14 Q. That's the last row closest to 17th Street?

15 A. Right.

16 Q. Okay. Mr. Croy got your car. Where did he take it?

17 A. He brought it up to the front row in a door that I was
18 leaving would be right here on the south side.

19 Q. That's the south side of the building?

20 A. Right.

21 Q. Is that the south side of the Consolidated building in
22 this picture, so when one refers to east --

23 A. That is west.

24 Q. -- refers to west of the southwest corner of the
25 building?

1 A. Right.

2 Q. Okay. Where did you line up?

3 A. We lined up right on this front row right here.

4 Q. This is the row of cars after the southwest corner of
5 the building?

6 A. Right.

7 Q. How did you proceed?

8 A. We just slowly went down this front row.

9 Q. In front of the building?

10 A. Right, in front of the building.

11 JUDGE AMCHAN: You were heading north?

12 THE WITNESS: Yes, we were heading north. Here's the
13 turn to go out of the parking lot. We were just slowly
14 leaving the parking lot, and everyone was leaving this north
15 exit, and I believe you can go north on this road.

16 Q. BY MR. LONERGAN: North on 17th Street?

17 A. Right.

18 JUDGE AMCHAN: You were headed north and made a left,
19 and then you made a right?

20 THE WITNESS: Yes.

21 Q. BY MR. LONERGAN: Thanks. And were there picketers
22 outside as you drove?

23 A. Yes, there were.

24 Q. And where were they?

25 A. They were along the exit on the north side.

1 Q. And how close were they to your car as you drove out?

2 A. They were very close. It seemed like when you would
3 approach them, it seemed like they were getting closer.

4 JUDGE AMCHAN: Do you remember how many there were?

5 THE WITNESS: Oh, goodness, just a ballpark figure of
6 maybe 50, but there could be more. I don't know.

7 JUDGE AMCHAN: 50? 5-0?

8 THE WITNESS: Fifty.

9 Q. BY MR. LONERGAN: How fast were you able to go as you
10 were leaving the facility?

11 A. We were going pretty slow. Maybe 1 or 2 miles per hour.

12 Q. How close were you to the car in front of you?

13 A. I mean, very close. There couldn't have been anybody
14 else -- there couldn't be another car between us. We were
15 pretty close.

16 Q. How about to the car behind you?

17 A. The same distance. She was following fairly close.

18 Q. Okay. Was there a plan to do it that way? Was that
19 discussed with you all?

20 A. The plan was just to parade out.

21 Q. Okay. No more detail than that?

22 A. No. No.

23 Q. Did you have a certain path that you were following?

24 A. We were just following the leader going out of the north
25 exit, and I don't remember if everyone turned north on the

Illinois Consolidated Telephone Company, 09/17/13

14-CA-094626 and 14-CA-101495

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1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 14
4 _____
5 |
6 In the Matter of: |
7 |
8 CONSOLIDATED COMMUNICATIONS d/b/a |
9 ILLINOIS CONSOLIDATED TELEPHONE |
10 COMPANY, |
11 |
12 Respondent, | Case Nos. 14-CA-094626
13 and | 14-CA-101495
14 |
15 INTERNATIONAL BROTHERHOOD OF |
16 ELECTRICAL WORKERS, LOCAL 702, |
17 AFL-CIO, |
18 |
19 Charging Party. |
20 _____

21
22 The above-entitled matter came on for hearing pursuant
23 to notice, before ARTHUR J. AMCHAN, Administrative Law Judge,
24 at Lake Land College, Workforce Development Center Building,
25 Room 105, 305 Richmond Avenue East, Mattoon, IL 61938,
26 on Tuesday, September 17, 2013, at 9:00 a.m.
27

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2

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41

1	I N D E X					
2						VOIR
3	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
4						
5	Eric Finley	1101	1105	1110	--	--
6			1107			
7						
8	Jeffrey M. Branson	1111	--	--	--	--
9						
10	Jonell Rich	1114	1126	1163	1168	--
11			1149			
12						
13	Bernice Dasenbrock	1173	1185	1208	--	--
14			1203			
15						
16	Ryan Whitlock	1211	1251	1279	1281	--
17			1253			
18						
19	Anna Bright	1282	1290	--	--	--
20			1304			
21						
22	Brad Beisner	1313	1341	1347	--	--
23						
24						
25						

1	E X H I B I T S		
2	EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
3	JOINT		
4	J-7 (c)	1128	1210
5	J-7 (d)	1175	1210
6	GENERAL COUNSEL'S		
7	GC-13 (c)	--	1225
8	GC-23	1295	1296
9	EMPLOYER'S		
10	R-1	--	1100
11	R-6	--	1100
12	R-9(a) through 9(dd)	1220	1237
13	R-10(a) and 10(b)	1103	<u>1113</u>
14	R-11	1233	1239
15	R-12	1321	1340
16	UNION'S		
17	U-1	1263	1264
18	U-2	1265	1267
19			
20			
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24			
25			

1 DIRECT EXAMINATION

2 Q. BY MR. LONERGAN: Mr. Whitlock, please state your name
3 for the record?

4 A. Ryan Whitlock.

5 Q. And I'm not sure that we've ever actually covered the
6 preliminary issue of what Consolidated Communications does?
7 What kind of company is it and what does it do?

8 A. We offer voice services to residential/business
9 customers, broadband services, television services, high-
10 speed private circuits for either the home -- just various
11 communication services.

12 Q. Okay. Can you please briefly describe the events
13 leading up to the strike?

14 A. Sure. I had received a phone call, and that phone call
15 to me was from Steve Hunter, stating that he wanted to meet.
16 And I believe he asked to meet at like maybe 10 o'clock or in
17 that general time frame -- 9:30 to 10. And so I agreed to
18 meet at our corporate building. And at that time I called
19 both Sam Jurka and Gary Patrem on the phone, who were on the
20 negotiations committee with me, and asked if they could also
21 meet downtown at the corporate building at 10 or whatever the
22 time was that he had suggested.

23 So I proceeded to the corporate building, and Steve was
24 there, along with Brad Beisner and Greg Millsap -- and I
25 believe Jerry Williamson was there as well. And we had to